

# EXHIBIT B.113

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARK I. SOKOLOW, et al.,  
Plaintiffs,

- vs -

Case No.  
04-CV-397(GBD)(RLE)

PALESTINE LIBERATION  
ORGANIZATION, et al.,

Defendants.

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DEPOSITION OF DR. SHARON WEILL  
Friday, November 22, 2013  
9:12 a.m.

Reported by:  
Fiona Farson  
Ref. No.: 10764

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Deposition of Dr. Sharon Weill  
November 22, 2013  
9:12 a.m.

Taken at:  
The offices of Arnold & Porter LLP  
International Financial Centre  
25 Old Broad Street  
London EC2N

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1 Friday, November 22, 2013  
 2 Deposition of DR. SHARON WEILL  
 3 (9:12 a.m.)  
 4 Examination by MR. YALOWITZ  
 5 BY MR. YALOWITZ:  
 6 Q. Good morning, Dr. Weill.  
 7 A. Good morning.  
 8 Q. Thank you for coming in today.  
 9 I wanted to ask you what a "lord law bachelor" is.  
 10 A. The first degree in law.  
 11 Q. Is it like a university degree, or a --  
 12 A. Yeah.  
 13 Q. -- an advanced degree?  
 14 A. It's the first -- it's three and a half years studying  
 15 in university, and it's the first degree of law.  
 16 Q. All right; thank you. That's helpful to me.  
 17 You were admitted to the Israeli Bar in the year  
 18 2000?  
 19 A. Yeah.  
 20 Q. Did you practice law in Israel?  
 21 A. No. I did my law training -- after I studied law in Tel  
 22 Aviv University, I did one year training, and then I did  
 23 the exam at the Bar, but I have not practiced;  
 24 I continue studying.  
 25 Q. Where did you do your training?

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1 A. In the prosecutor office in Tel Aviv, the criminal  
 2 division.  
 3 Q. Is that a civilian court, or a military court?  
 4 A. No, it's Tel Aviv District Court, civil -- but criminal  
 5 law.  
 6 Q. Civilian --  
 7 A. Yeah, civilian and criminal matters, yeah.  
 8 Q. And did you, as part of your work in the Tel Aviv  
 9 District Court, as a trainee, did you appear in court  
 10 and speak to the judges?  
 11 A. No, we -- because we are not yet lawyer; right? So we  
 12 are "stagiaire," they call it in Israel; so we work on  
 13 the files with prosecutor; we help in this kind of  
 14 thing. And then we appear in court, but not the  
 15 District Court; only first instance court, or rather  
 16 minor offenses.  
 17 Q. Magistrate court?  
 18 A. Yeah. But really minor offenses. Because the -- the  
 19 cases I was working with the prosecutor were big cases  
 20 of rape and whatever, but we didn't appear in these  
 21 cases.  
 22 Q. Did you work on any security-related matters during your  
 23 one year of training?  
 24 A. No, it was -- I mean, the prosecutor I was working with  
 25 her, she was -- let's say specialty was sexual assault

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1 cases. So it was mostly rape cases.  
 2 Q. Did you -- did you ever work with the GSS during your  
 3 training?  
 4 A. No. Not in the training.  
 5 Q. And not elsewhere?  
 6 A. No.  
 7 Q. Not ever?  
 8 You served in the IDF?  
 9 A. Yeah.  
 10 Q. What did you do?  
 11 A. I was in the human resource department; I think it's  
 12 called Chalizhut, human resources. And I was based in  
 13 the Navy, so I was in an office in Haifa, of the Navy.  
 14 It's -- because I lived quite close, so I was, like,  
 15 working in the office there.  
 16 Q. Did you grow up in Israel?  
 17 A. After -- since eight years old. I was born in France,  
 18 and at eight, I arrived with my family.  
 19 Q. You speak like you're French.  
 20 A. Yeah? I am French.  
 21 Q. It's okay; I just ...  
 22 A. Yeah.  
 23 Q. Uh-huh.  
 24 Have you -- do you teach at a university?  
 25 A. Yes, several universities, yeah.

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1 Q. Do you teach any classes about the Israeli military  
 2 courts?  
 3 A. So -- currently, at that moment, no; but I did -- when  
 4 I was -- sorry, I --  
 5 Q. That's okay.  
 6 A. -- when I was at -- I was teaching at Tel Aviv  
 7 University, and there, I had specific courses on this;  
 8 we went even, with the class, to the military courts  
 9 three time -- I mean, three different years -- three  
 10 years; I'm almost sure it's three.  
 11 And -- but here in -- when I teach in Paris, or  
 12 Geneva, I don't have specifically -- maybe there are  
 13 mention, you know, as a part of the law, military  
 14 occupation.  
 15 Q. Did -- was your -- what was the class in Tel Aviv  
 16 that -- at Tel Aviv University that dealt with the  
 17 Israeli military court system?  
 18 A. I need to -- I think the specific topic was the issue of  
 19 IHL and human rights, and the question of the due  
 20 process right in the military courts. I think on this  
 21 I concentrate to one specific lecture of two hours.  
 22 Yeah.  
 23 Q. And you repeated that lecture for three years?  
 24 A. I think so. I need to check the syllabus, but I believe  
 25 I did, yeah, or maybe two years. I don't remember,

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1        yeah.

2        Q. Other than the lecture that's part of the class that you

3        described -- and first of all, do I have it right that

4        the class was a full semester class?

5        A. Yes.

6        Q. And what was the title of the class?

7        A. Do you mean in Tel Aviv?

8        Q. Yeah.

9        A. The class in Tel Aviv that I did?

10       Q. Yes.

11       A. It was "The Law of Military Occupation and its

12       Application by the Israeli High Court of Justice." This

13       was the title, I think. It's an optional course.

14       Q. And so what -- what kinds of topics did it cover?

15       A. Many topics. Every lecture was a different topic. And

16       it was all related to the occupation -- the Israeli

17       occupation. So you have one class, for example, on

18       targeted killing; one class on legislation power; one

19       class -- you know.

20       Q. Different things?

21       A. Different -- yeah, different topics.

22       Q. And one of the -- one of the lectures was dedicated to

23       the Israeli military courts?

24       A. Yeah. I think it was at the part of IHL and human

25       rights, yeah. And the right of due process, yeah.

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1        Q. So can I just ask you about IHL and HRL. So "IHL"

2        stands for "international humanitarian law"; is that

3        right?

4        A. Yeah.

5        Q. And sometimes that's referred to as the law of war?

6        A. Mm-hmm.

7        Q. Is that correct?

8        A. Mm-hmm.

9        Q. So you have to say "yes," or "no," or --

10       A. Sorry: Yes.

11       Q. -- some word --

12       A. Yes. Yes. Yes.

13       Q. -- for Fiona.

14       Okay. And that's like the Geneva -- Fourth Geneva

15       Convention and the Fourth Hague Convention, and that --

16       that's sort of the field of IHL?

17       A. Yeah. There's other laws, also, but these are the main

18       conventions, you can say.

19       Q. And then human rights law is a different thing; right?

20       A. A different branch of law, yeah.

21       Q. A different branch of law. And that's -- what are some

22       of the main sources of that legal field?

23       A. Human rights law?

24       Q. Yes.

25       A. So you have the UN conventions, the International

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1        Covenant on Civil and Political Rights, the UN

2        Convention Against Torture. So you had the

3        international convention; then you had conventions on

4        regional level, like the European Convention. Then you

5        have decision of different courts.

6        Q. So in a sort of a supernutshell, international human

7        rights law could be thought of as like protecting basic

8        human rights in any circumstance?

9        A. Exactly.

10       Q. War, non-war; doesn't matter. Right?

11       A. Mm-hmm -- yes.

12       Q. Okay.

13       Now, is part of the -- other -- well, first of all,

14       other than the lecture you've described from the course

15       that you taught about the occupation in Tel Aviv

16       University, have you done other teaching about the

17       Israeli military court system?

18       A. No.

19       Q. And you have published some articles --

20       A. Mm-hmm.

21       Q. -- about the Israeli military court system; right?

22       A. Yes.

23       Q. I think I -- I read an article called "The Judicial Arm

24       of the Occupation," or something like that.

25       A. I'm happy you read it.

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1        Q. And -- sadly I didn't pay for it, or you would --

2        A. Pay?

3        Q. -- get a royalty -- yeah.

4        A. I have not -- I don't have any ...

5        Q. And then -- and then there was another -- I think

6        a chapter of a book that I read recently called

7        "Reframing the Legality" --

8        A. Yeah.

9        Q. -- "of the Israeli Military Courts"?

10       A. Yeah.

11       Q. Is that a more recent publication?

12       A. Yeah, this is from 2011.

13       Q. Is there anything else that you've published that

14       touches on those topics, the topic of the Israeli

15       military court system?

16       A. So there is one article that is going to be published on

17       9th December, so -- like, it's very soon; in two weeks.

18       It's about torture, so I believe it's linked, more or

19       less. So there is this article -- I think you received

20       this as well; right? I think so.

21       Q. I think I did.

22       A. Yeah. Yeah.

23       Q. Right. Did we -- I think we received that.

24       A. Yeah.

25       MR. YALOWITZ: You sent that to us; right?

1 MR. HILL: For the record, you recently requested it, and  
 2 I did send it to you.  
 3 A. Yeah.  
 4 MR. YALOWITZ: I thought you did. Thank you for -- thank  
 5 you for that, both of you.  
 6 A. And so this -- now I'm going to publish the book, and  
 7 it's not specifically on the Israeli military courts;  
 8 it's on national courts in general. But there are some  
 9 passages related to the military court.  
 10 BY MR. YALOWITZ:  
 11 Q. All right. And is that book in prepublication? How far  
 12 along is it?  
 13 A. It will be published on the 6th of March. I have the  
 14 date.  
 15 Q. That's exciting. So you're still work on the galleys  
 16 and proofs and things like that?  
 17 A. I sent the proofs.  
 18 Q. Outstanding.  
 19 A. Yeah.  
 20 Q. Well, we'll keep an eye out for it when it's published.  
 21 This one, we can -- we can purchase.  
 22 A. Yes.  
 23 Q. All right.  
 24 A. This one you will need to pay.  
 25 Q. Very good.

1 So -- so maybe I'll ask you about the judicial arm  
 2 of the occupation; I have a few questions about that.  
 3 Why don't we -- why don't we look at it together, and  
 4 I'll give you a copy -- by the way, would you like  
 5 a copy of your report also?  
 6 A. Yeah, sure, why not.  
 7 Q. Yeah.  
 8 MR. YALOWITZ: Why don't we mark both of those. So  
 9 we'll mark, as Weill deposition exhibit 1, your report;  
 10 and we'll mark as Weill deposition exhibit number 2  
 11 a copy of your article, "The Judicial Arm of the  
 12 Occupation."  
 13 (Exhibits 1 and 2 marked for identification.)  
 14 BY MR. YALOWITZ:  
 15 Q. So I was going to ask you about the article, which is  
 16 "The Judicial Arm of the Occupation." You have it  
 17 before you; right?  
 18 A. Yes.  
 19 Q. And you -- you published this in 2007?  
 20 A. Yes.  
 21 Q. What research did you do for this article?  
 22 A. Oh, the article is a smaller version of my master thesis  
 23 that I submitted in the University of Geneva, under the  
 24 supervision of Marco Sassoli. And this was  
 25 a publication based on that research.

1 So what -- sorry, you asked me what was the ... ?  
 2 Q. What was the research?  
 3 A. What was the research? So I -- the question of my  
 4 research was the question of jurisdiction of the  
 5 military courts.  
 6 Q. And you attended some military court hearings in  
 7 connection with that work; is that right?  
 8 A. I attended some hearing. Actually, what I did, I -- in  
 9 order to conduct the research, I studied the  
 10 legislation -- which is, by the way, not that evident,  
 11 because -- you know, the order is amended quite  
 12 frequently, and it was quite difficult to find the  
 13 relevant legislation for the relevant time.  
 14 So I looked for the legislation; I read a number of  
 15 case law; I went to the military court. Yeah.  
 16 Q. You spoke with Judge Shaul Gordon?  
 17 A. Gordon, yeah.  
 18 Q. And I think I asked about your notes of your  
 19 conversation with him, but you didn't have them; is that  
 20 right?  
 21 A. I don't have them now. I did that for the thesis,  
 22 and --  
 23 Q. I see.  
 24 A. -- it's part of the research then. I don't think I kept  
 25 notes since then.

1 Q. It's been some time?  
 2 A. Yeah.  
 3 Q. All right. So -- anything else? Did you -- did you  
 4 read any trial transcripts, or anything like that?  
 5 A. For the research of the -- the article, so I read the --  
 6 I read mainly cases. I -- it was less transcript of  
 7 cases, although I imagine I read a few; but you know,  
 8 I read cases that started from '67, so it's not  
 9 necessarily that you have access to the -- to the  
 10 transcript.  
 11 Then I was discussing also with defense lawyer and  
 12 prosecutor. But transcript, as such, I don't remember  
 13 reading -- maybe one or two. Not more.  
 14 Q. You --  
 15 A. And then -- sorry. And then of course I read also all  
 16 the academic material that was available at that time,  
 17 and also -- and joint press report, which was quite  
 18 restrained. There weren't a lot of publication at that  
 19 time. And in this footnote here, I mention more or less  
 20 what was available, in footnote number 1.  
 21 And you can see that it wasn't very, very -- it's  
 22 not all the bibliography of my thesis, but there weren't  
 23 very much reports at that time.  
 24 Q. When you say "restrained," you mean there just wasn't  
 25 very much material --

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1 A. Publications, yeah.  
 2 Q. All right.  
 3 A. Yeah.  
 4 Q. I noticed you mentioned a thing called collection of  
 5 proclamations, orders, and appointments of the military  
 6 commander in the West Bank region.  
 7 A. Yeah, this is -- sorry. This is the official gazette,  
 8 we can call it, yeah, for the military orders.  
 9 Q. How did you find it?  
 10 A. In the law library. But -- you know, you have one shelf  
 11 with classes, so starting from '67, and then you have  
 12 all the orders in chronologic issue; you know? So in  
 13 order to try to understand -- it's very complicated.  
 14 So you have this official gazette there, and it stop  
 15 at -- sometimes, so you don't have everything; it's not  
 16 very completed, it -- what was at the university. These  
 17 -- these where I saw the gazette. Yeah.  
 18 Q. Do you -- do you -- your article noted, and I think you  
 19 mentioned --  
 20 A. Mm-hmm.  
 21 Q. -- that the military courts you were studying were first  
 22 constituted in 1967; is that right?  
 23 A. Yes.  
 24 Q. And have they been in session ever since?  
 25 A. Yes.

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1 Q. They're not sort of -- nobody is tried, in a one-shot  
 2 court; right? You know what I mean by that?  
 3 A. No, no. They are well -- how to say -- they are since  
 4 1967, exactly.  
 5 Q. Well established?  
 6 A. Long established.  
 7 Q. Long established?  
 8 A. "Well," I don't know; but "long."  
 9 Q. Fair enough. "Long established"; right?  
 10 A. Right.  
 11 Q. Do you know what the basis under Israeli law for the  
 12 establishment of the court in 1967 was?  
 13 A. Yeah, the proclamation order.  
 14 Q. And -- and is that -- has that proclamation order ever  
 15 been challenged under the law of Israel?  
 16 A. No. As far as I know.  
 17 Q. Now, you said in the article that -- and I'm looking at  
 18 page 398 -- you said:  
 19 "Intervention by the occupying power in the local  
 20 administration of justice is authorized only for reasons  
 21 of security, for the application of the Convention" --  
 22 and by that, I think you were referring to the Fourth  
 23 Geneva Convention?  
 24 A. Exactly.  
 25 Q. "... and for 'the necessity for ensuring the effective

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1 administration of justice'.  
 2 And you're -- you're relying for that statement on  
 3 Article 64 of the Fourth Geneva Convention; do I have  
 4 that right?  
 5 A. Yes.  
 6 Q. And that -- that statement is a correct statement of  
 7 applicable law today as well; right?  
 8 The statement I read is correct; right?  
 9 A. The statement -- what do you mean? The article, if the  
 10 article is correct today?  
 11 Q. Well, the sentence -- let me break it down.  
 12 A. Yeah. Okay.  
 13 Q. Okay. So -- so I read you a sentence --  
 14 A. Can you just tell me where you start the sentence? I --  
 15 you know ...  
 16 Q. Sure. I'm so sorry.  
 17 A. No, no.  
 18 Q. So do you see footnote 10?  
 19 A. Yes, I see it, yeah.  
 20 Q. Do you see the reference to footnote 10? It's in the  
 21 second paragraph.  
 22 A. Yeah.  
 23 Q. So that's the sentence I read.  
 24 A. The -- "intervention," yeah.  
 25 Q. So what you're describing there is the application of

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1 Article 64 of the Fourth Geneva Convention; right?  
 2 A. Mm-hmm.  
 3 Q. You have to --  
 4 A. Yes.  
 5 Q. And you described it in 2007, but it's -- it's still  
 6 correct today, that description of --  
 7 A. Yes, the article -- yes.  
 8 Q. And -- and the article -- Article 64 was in effect in  
 9 1967; right?  
 10 A. Right.  
 11 Q. And has remained in effect ever since; right?  
 12 A. Exactly.  
 13 Q. Okay. And so just to narrow our focus to security,  
 14 certainly legislation and judicial administration in the  
 15 military courts, for reasons of protecting security of  
 16 the State of Israel, you would agree, is appropriate for  
 17 the military courts?  
 18 MR. SATIN: Objection as to --  
 19 BY MR. YALOWITZ:  
 20 Q. Do I have that right?  
 21 MR. SATIN: Objection as to -- vague.  
 22 You can answer.  
 23 WITNESS: I can answer?  
 24 A. When I refer to Article 64, or any article that is  
 25 related to the law of military occupation, we have to



Page 21

1 remind that they were draft for occupation; and at that  
2 time, the drafting of the convention in 1949, occupation  
3 was seen as a transit situation, a temporary situation.  
4 And therefore, during this time, as it's stipulated in  
5 this article, you could have some authorities related to  
6 legislation and to judicial enforcement and to  
7 execution, in order to safeguard the order and security  
8 for this short time that you are governing there.

9 So there wasn't -- I mean, I think that when the  
10 Geneva Convention was drafted, no one had expected that  
11 this law will govern during 45 years. So this is  
12 something that we must remember when we are dealing with  
13 the law of military occupation.

14 Q. You had a French phrase that you used to describe that  
15 concept that you just said -- which I'll mangle, because  
16 my French is very bad -- but you said (French spoken),  
17 something like that --

18 A. What? I can't understand your French.

19 Q. Yeah. Lucy will read it.

20 MS. McMILLAN: (French spoken.)

21 A. (French spoken.)

22 BY MR. YALOWITZ:

23 Q. What does that mean?

24 A. "Nothing lasts as the temporary."

25 Q. So -- and I think you've written about -- what you just

Page 22

1 said about temporary versus long term --

2 A. Mm-hmm.

3 Q. -- that was the subject of your article, "Reframing the  
4 Legality of the Israeli Military Courts on the West  
5 Bank"; right?

6 A. Yes, with other issues, yeah.

7 Q. And I think that one of the arguments you made was  
8 that -- was that -- I'm not seeing it here; bear with me  
9 one second.

10 A. Yeah, sure.

11 Q. I'm not seeing it here, but let me try to explain what I  
12 -- what I'm curious about.

13 You described international humanitarian law as  
14 governing the process of the administration of a  
15 military court system in occupation?

16 A. "Process"? What do you mean by "process"?

17 Q. So -- like, it regulates the conduct of the trials, or  
18 it regulates the conduct of the courts, and so forth.  
19 It doesn't -- it doesn't address the legality of the  
20 occupation itself, which is really a political question.  
21 Does that -- was that you who wrote that?

22 A. The IHL is -- IHL more in generally; not only relating  
23 to the military court -- is relating how to administrate  
24 an occupation.

25 Q. Right. And that it really doesn't -- international

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1 humanitarian law really isn't designed to answer the  
2 question whether an occupation should continue, how  
3 a conflict should be resolved; it doesn't answer those  
4 larger questions. Right?

5 A. You have some provision, like Article 47, saying that if  
6 there have been, for example, an annexation, then still  
7 the rights, as defined by the Geneva Convention, are  
8 applicable.

9 And then you have, of course, other branches of  
10 law -- as public international law, the right to  
11 self-determination, the nonacquisition of territory by  
12 force -- that are similarly applicable.

13 Q. So --

14 A. And then they will have a stand about the illegality of  
15 an occupation.

16 Q. Things like public international law might speak to  
17 that?

18 A. Yes.

19 Q. Do you think that Articles 64 and 66 speak to the  
20 legality of an occupation?

21 A. No, it gives the -- it grant the authority to establish  
22 military court and provide legislation.

23 Q. All right. And Article 64 also gives the authority to  
24 the military to establish legislation relating to  
25 security around the conflict; is that fair to say?

Page 24

1 A. Right, yeah, it provides a bit more detail that were --  
2 of Article 43 of the regulation.

3 Q. All right. Now, you -- would you agree with me that  
4 the -- that under the -- under Article 64, the military  
5 government centralizes judicial, legislative and  
6 executive powers?

7 MR. SATIN: Objection, compound question.

8 You can answer.

9 A. Yeah. I didn't -- can you repeat this? I didn't  
10 understand very well.

11 BY MR. YALOWITZ:

12 Q. Sure. No, no, that's okay; bear with me. I'm going to  
13 try to get it just right.

14 In an occupation, under Article 64 of the Fourth  
15 Geneva Convention, the military government centralizes  
16 in its hands all government powers: The legislative,  
17 judiciary, and enforcement authorities?

18 A. The military government centralize all these powers, and  
19 it is beyond, also, Article 64, as you first asked me  
20 how the courts were created, and I told you it's a  
21 proclamation order. So you see, it's the military  
22 commander that is legislating. It established the  
23 courts, it created the law that will be in force there,  
24 and of course it's also the enforcement authority.  
25 Yeah.

Page 25

1 Q. And in fact, I think you would agree with me that Israel  
 2 is actually forbidden from extending its own legal  
 3 system to the West Bank; right?  
 4 A. It is forbidden, and unfortunately, it does so for the  
 5 settlements.  
 6 Q. So -- but -- but yes, it's forbidden to do that; right?  
 7 Israel couldn't establish civilian courts in the West  
 8 Bank to try Palestinians for security crimes; right?  
 9 A. Israel couldn't establish civilian court ... ?  
 10 Q. In the West Bank.  
 11 A. What do you mean by "civilian court"? That you will --  
 12 you will have civilian judging the person?  
 13 Q. Right.  
 14 A. I think it could. Why not?  
 15 Q. So, for example, you know in our case here, there  
 16 were 21 convictions of Palestinians for security crimes.  
 17 You -- you read those files; right?  
 18 A. I admit I didn't really read them, because it was  
 19 very -- I received them, but I didn't have -- I just --  
 20 you know, look in them very briefly, yeah. So I can't  
 21 recall the facts, or -- you know.  
 22 Q. All right.  
 23 A. Yeah.  
 24 Q. Counsel for the Palestinian Authority gave you those  
 25 files to use as you thought might be relevant for your

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1 opinions; is that fair to say?  
 2 MR. SATIN: Objection, calls for speculation.  
 3 You can answer.  
 4 A. Sorry, I -- your -- if it was -- no. Yeah.  
 5 BY MR. YALOWITZ:  
 6 Q. Okay. Counsel --  
 7 A. Yeah.  
 8 Q. You were hired by counsel for the Palestinian  
 9 Authority --  
 10 A. Right.  
 11 Q. -- right? And -- and the PLO?  
 12 A. Mm-hmm.  
 13 Q. Is that right?  
 14 You have to say "yes" or "no."  
 15 A. Yes.  
 16 Q. Okay. And -- and that's -- was that Mr. Satin or  
 17 Mr. Hill?  
 18 Who hired you?  
 19 A. Mr. Hill.  
 20 Q. Mr. Hill?  
 21 Who hired you?  
 22 A. Mr. Hill.  
 23 Q. Mr. Hill. Okay. And Mr. Hill sent you those files;  
 24 right?  
 25 A. I -- I've received these files, yeah.

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1 Q. All right. And your -- you had them to use as you saw  
 2 fit for the purposes of your report?  
 3 A. Yeah.  
 4 Q. Okay. And you understand all the defendants were  
 5 Palestinian residents; right?  
 6 A. Mm-hmm -- yes.  
 7 Q. Okay. Would it have been appropriate under IHL, in your  
 8 opinion, for the State of Israel to have established  
 9 a civilian criminal court, say in Ramallah, staffed by  
 10 citizens of Israel, non-military, to try criminal cases  
 11 like the 21 that we're here to discuss?  
 12 A. Yeah. I think the question is not whether the judges  
 13 are wearing -- are military or civilian; it's the  
 14 question of the structure of the court, to be  
 15 nonpolitical and to be competent court, to be  
 16 independent. And then the applicable law will safeguard  
 17 the basics rule of due process.  
 18 This is the requirement. Then, how you really do  
 19 it, it's a -- it can be -- you know, it can vary. But  
 20 these are the requirements.  
 21 Q. So -- so in your judgment, the -- there would not be  
 22 a problem establishing a civilian court to apply Israeli  
 23 law in the West Bank?  
 24 A. I'm not sure if I understand what you mean, "civilian."  
 25 If it is the State of Israel establishing it?

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1 Q. Yes.  
 2 A. No. The State of Israel cannot establish a court in the  
 3 occupied territory. Is this what you mean by saying  
 4 "a civilian court"?  
 5 Q. That's what I meant by saying "a civilian court."  
 6 A. So if this is the meaning of the word "civilian court,"  
 7 like a court established by the State, so it's  
 8 impossible, because the military commander is the  
 9 legislative authority in the Occupied Territory.  
 10 Q. That's what I thought you would think. Okay. I think  
 11 we understand each other now.  
 12 A. Okay.  
 13 Q. I say "civilian" to contrast with "military." So  
 14 military courts are under the military commander;  
 15 civilian courts are nonmilitary courts, established by  
 16 the State of Israel.  
 17 A. By the State, okay. So if this is a -- okay.  
 18 Q. Sorry for the confusion.  
 19 A. So we understand -- yeah.  
 20 Q. Okay, excellent.  
 21 Now, did you read enough of the 21 --  
 22 A. And by the way, can I just add something?  
 23 Q. Please.  
 24 A. What is astonishing is that they established civilian  
 25 court, this kind of court, in the settlements; right?



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1 Q. So --  
 2 A. Okay, but this is --  
 3 Q. So -- our case isn't -- isn't about any of those courts;  
 4 fair to say?  
 5 A. No, without -- fair enough, yeah.  
 6 Q. Okay. So did you -- did you read enough of the 21 case  
 7 files to understand that these were all cases of people  
 8 accused of security crimes?  
 9 A. Yes, they are accused of security crime, I'm -- I know.  
 10 Q. And do you agree with me that that's within the core  
 11 competency of the military courts?  
 12 A. Yes.  
 13 Q. Did -- after you submitted your report --  
 14 A. Mm-hmm.  
 15 Q. -- we retained an individual named Daniel Reisner, to  
 16 prepare a report and submit it to the lawyers for the  
 17 defendants. Did you have a chance to read that report?  
 18 A. Yes, I've read it.  
 19 Q. And do you -- I take it you don't know Mr. Reisner  
 20 personally?  
 21 A. Personally, no.  
 22 Q. You've met, but quite briefly, I gather? Is that right?  
 23 A. Yeah.  
 24 What -- what do you mean, we met?  
 25 Q. I heard you met recently at a lecture --

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1 A. I was --  
 2 Q. -- or something --  
 3 A. No, no, I was in -- yes, I was in a conference, and he  
 4 was saying Professor Kvechver -- yes, I'm -- how you say  
 5 -- I give an expert opinion, and there is this Sharon  
 6 Weill from Geneva. And then a friend of mine said, "She  
 7 is here."  
 8 This is how I remember. But I -- I didn't speak to  
 9 him, and I don't know him personally at all.  
 10 Q. Perhaps after the case you can -- you'll have a lot to  
 11 discuss.  
 12 A. I don't know.  
 13 Q. All right. Did you -- did I ask you this? Did you read  
 14 his report?  
 15 A. I read, yes, of course.  
 16 Q. Okay. Good.  
 17 Do you know -- other than Israel and the West Bank,  
 18 which is really the focus of our conversation today, are  
 19 there other places where military occupation courts have  
 20 been established and in compliance with -- well, let me  
 21 ask it again; let me ask it a different way. I'll ask  
 22 a background question first.  
 23 You understand that the -- when the Israel -- when  
 24 the Israeli military commander established the military  
 25 courts, the intention was to make an effort to comply

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1 with the Fourth Geneva Convention; is that fair to say?  
 2 A. I think -- I think that the reason the military courts  
 3 were established -- because you don't have any  
 4 obligation to establish them, so I think that the  
 5 obligation was -- and I've read this in the Yesh Din  
 6 report, there are sitting Shamgar that was part of  
 7 the -- the ones that established the military court,  
 8 saying that they needed this court to handle security  
 9 issue. And at that time, they were sure that the  
 10 structure will be of short -- short -- how to say --  
 11 that it will operate for a short term.  
 12 Q. "Short duration"?  
 13 A. Yeah.  
 14 Q. It was established to handle security matters; is that  
 15 what you're saying?  
 16 A. I believe so, yeah.  
 17 Q. And is it your understanding that they -- that they made  
 18 an effort to model the courts on the Fourth Geneva  
 19 Convention and the US and UK manuals on how to comply  
 20 with the Fourth Geneva Convention?  
 21 MR. SATIN: Objection, calls for speculation, and compound  
 22 question.  
 23 You can answer.  
 24 A. (French spoken.) So the question was if they made  
 25 effort to comply with the Geneva Convention?

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1 BY MR. YALOWITZ:  
 2 Q. That's a fair summary.  
 3 A. I don't know if they made effort.  
 4 Q. Well, I mean, did you read --  
 5 A. Yeah.  
 6 Q. -- the section of Reisner where he talks about the way  
 7 that the Fourth Geneva Convention and the US and UK  
 8 manuals were used to create the military court? Did you  
 9 read that section of his report? Do you recall it?  
 10 A. The report that -- I don't remember this part, no.  
 11 Q. I'd better show it to you.  
 12 A. Yeah. Maybe.  
 13 Q. I'll show it to you.  
 14 MR. YALOWITZ: All right. We'll mark as Weill 3 the expert  
 15 report of Reisner.  
 16 (Exhibit 3 marked for identification.)  
 17 BY MR. YALOWITZ:  
 18 Q. So would you please turn to page 10 of Mr. Reisner's  
 19 report. I want to direct your attention to  
 20 paragraph 24.  
 21 A. Mm-hmm.  
 22 Q. Is there anything in paragraph 24 that you disagree  
 23 with?  
 24 A. No, of course not.  
 25 Q. And then I'd like to direct your attention to

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1 paragraph 25. Is there anything in paragraph 25 that  
 2 you disagree with?  
 3 A. While not strictly required under international law,  
 4 what is -- I think that publication is required of  
 5 orders by military.  
 6 Ah, the proclamation: Yes. Yes, and I think -- you  
 7 can also read the -- you can see also, this also reflect  
 8 Article 43 of the Hague regulation, absolutely, yeah.  
 9 Q. So -- I probably should have given you a chance to read  
 10 article -- read paragraph 25 before I asked my question,  
 11 so let me ask it again.  
 12 A. Yeah, sure.  
 13 Q. You've read paragraph 25; right?  
 14 A. Mm-hmm.  
 15 Q. You have to say --  
 16 A. Yes, I've read it.  
 17 Q. And is there anything in paragraph 25 that you disagree  
 18 with?  
 19 A. Yes, I think there is a -- mistaken about the fact that  
 20 you don't require publication of orders. Because once  
 21 you do orders, you need to publish them. Now, you might  
 22 say that you don't need to issue an order to exercise an  
 23 occupation, because this is a de facto situation, and  
 24 this you don't need any law to say I'm now occupying or  
 25 not; this is a question of fact.

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1 But I don't agree that you don't need to publish  
 2 orders once they are issued.  
 3 Q. So I think I see your criticism of paragraph 25.  
 4 A. Yeah.  
 5 Q. Do I have it right that if you were rewriting or editing  
 6 paragraph 25, would you take out words "the publication  
 7 of," and then it would be correct?  
 8 A. Yes.  
 9 Q. Okay. Excellent.  
 10 I'd -- I'd like now to direct your attention to  
 11 paragraph 26 of the Reisner report.  
 12 A. Mm-hmm.  
 13 Q. If you just take a moment, and let me know when you've  
 14 had a chance --  
 15 A. Finished, yeah.  
 16 Q. -- to read that.  
 17 A. Yeah, exactly, this is the reflection of Article 43.  
 18 Yes, absolutely, I know that proclamation.  
 19 Q. All right. And do you --  
 20 A. I agree with this. This is what they said.  
 21 Q. Outstanding.  
 22 I'd like to direct your attention to paragraph 27,  
 23 and just let me know --  
 24 A. Yeah.  
 25 Q. -- when you've had a chance --

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1 A. And then the Hague regulation, yeah, it's fine.  
 2 Exactly. No problem, yeah.  
 3 Q. You agree with paragraph 27?  
 4 A. Yeah, yeah, absolutely. Yeah, yeah. I think  
 5 I mentioned this also in my expert opinion, the same.  
 6 Yeah.  
 7 Q. And if -- if I could also direct you to paragraph 28.  
 8 A. Yeah, it's like copying the article, yeah.  
 9 Q. And you agree with paragraph 28; right?  
 10 A. Exactly, yeah.  
 11 Q. And I'd like you to review paragraph 29.  
 12 A. Yeah, so --  
 13 Q. Have you had a chance to review paragraph 29?  
 14 A. Yes.  
 15 Q. Do you agree with it?  
 16 A. I would not say that a commander can change a law when  
 17 it feels -- you know, it's not a question of feeling;  
 18 he's using the -- I mean, you know, the -- the article  
 19 43 that we just spoke about was saying while -- "unless  
 20 absolutely prevented."  
 21 And similarly, the commentary of the Geneva  
 22 Convention also are talking about real needs. So it's  
 23 not a feeling, but -- yes, let's say, when it's  
 24 absolutely prevented and there is a need. Yeah.  
 25 Q. So I take it you'd make -- if you were editing

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1 paragraph 29 --  
 2 A. Yeah, I'm editing now the opinion of Reisner, yeah.  
 3 Q. You would take out words "it feels"?  
 4 A. Okay, yeah. Let's say, yeah. "It feels" seems a bit  
 5 not -- out of place, yeah.  
 6 Q. And so you would read --  
 7 A. Because it should be an objective test, not a subjective  
 8 one.  
 9 Q. And there are two places where those words appear --  
 10 A. Mm-hmm.  
 11 Q. -- and you would take them out in both places; right?  
 12 A. Mm-hmm. Yeah.  
 13 Q. And then would you add some additional -- I think you --  
 14 just in fairness --  
 15 A. Yeah, I --  
 16 Q. -- you added a sentence about --  
 17 A. Unless absolutely prevented. This is Article 43; right?  
 18 Q. All right. Anything else on 29?  
 19 A. I -- no, I think it's fine.  
 20 Q. All right.  
 21 Please look at article -- look at paragraph 30 with  
 22 me.  
 23 A. Yeah.  
 24 Q. And let me know when you've had a chance to review it.  
 25 A. Yeah, I think it's fine.

1 Q. You agree with paragraph 30?  
2 A. Mm-hmm.  
3 Q. You have to say --  
4 A. Yes, yes.  
5 Q. All right.  
6 And please review --  
7 A. We continue here.  
8 Q. -- paragraph 31.  
9 We're not going to do the whole thing --  
10 A. Not all day, I hope.  
11 Q. -- I promise. I promise.  
12 But -- but just do look at paragraph 31.  
13 A. The UK one? From what date is the UK one? It's not  
14 written.  
15 From '58.  
16 Q. It appears on paragraph 25 as 1958.  
17 A. Yeah, I think it's -- it's really repeat Article 66.  
18 Yeah, it's endorse Article 66, yeah.  
19 Q. And so if you could read paragraphs 32 and 33, that  
20 would be helpful to me. Let me know when you've  
21 finished reading 32 and 33.  
22 A. Yeah. I mean, again, you know, it's using a word that  
23 is -- for example, at c:  
24 "Repeal and amend local laws and to legislate new  
25 law, as necessitate by the exigenc[y] of the situation."

1 Yes, but -- okay, so you have the convention that is  
2 saying security application of the convention. But  
3 generally, I will say okay.  
4 Q. Generally, you think that --  
5 A. Yeah, yeah.  
6 Q. -- 32 and 33 --  
7 A. Not to review every word; you know?  
8 (Reporter clarification.)  
9 BY MR. YALOWITZ:  
10 Q. Let me finish the question.  
11 Generally, you think that 32 and 33 are a fair  
12 summary of what Mr. Reisner has said before?  
13 A. Yes.  
14 Q. All right. And I take it you don't endorse every word  
15 that he's said here, but you think he fairly captures  
16 the spirit of it; is that fair to say?  
17 A. Yes, you can say.  
18 Q. All right. Are there any particular things in  
19 paragraph 32 or 33 that you would omit?  
20 A. "Omit"? 32 -- okay, so in respect -- exist in local law  
21 unless absolutely prevented, I would say, and --  
22 Q. Instead of -- inasmuch as -- in 32a --  
23 A. Yeah. You see, it's like a question of --  
24 Q. In 32a, you would say respect existing local laws unless  
25 absolutely prevented?

1 A. Mm-hmm.  
2 Q. Anything else?  
3 A. I think it's -- it's fine.  
4 Q. Okay.  
5 Now, my -- would you look with me at paragraph 34.  
6 A. Mm-hmm.  
7 Q. In the first -- well, why don't you take a moment and  
8 read paragraph 34.  
9 A. Read, yes. Thank you.  
10 Q. Sure.  
11 A. Yes, I -- I would agree. I would agree, really, but  
12 only the last sentence, "and it established the ...  
13 military court system"; I would omit "required."  
14 Q. Okay, thank you. That's helpful.  
15 All right. So I want to ask you, are there other  
16 conflicts or occupations where a military court system  
17 has been established as contemplated in Article 66?  
18 A. Not that I know.  
19 Q. I want to ask you about sources of law --  
20 A. Mm-hmm.  
21 Q. -- in the West Bank, which you describe on page 6 of  
22 your report.  
23 A. Mm-hmm.  
24 Q. Let's look together at page 6.  
25 A. This is my report.

1 Q. Do you have it before you?  
2 A. Yeah.  
3 Q. So I -- I was wondering whether, since 1995, you would  
4 also include the Interim Agreement as a source of law in  
5 the West Bank.  
6 A. It's an international agreement, yes, that is  
7 applicable, yeah.  
8 Q. So you --  
9 A. But you know -- sorry.  
10 Q. No, please, go ahead; I didn't mean to interrupt.  
11 A. It's an international agreement which is applicable.  
12 Q. So is it included, or would you amend your report, maybe  
13 to add an additional bullet point?  
14 A. This is a -- the international agreement, like peace  
15 agreement, are not -- then depends, I think, on every  
16 domestic legal system, but I don't think that they are  
17 applicable as laws, for example, that you can enforce in  
18 court, but you need to endorse local -- local -- local  
19 laws on this.  
20 So I'm not sure that -- I mean, the question is  
21 whether a peace treaty, an international agreement, is  
22 the source of law. I --  
23 Q. So --  
24 A. It's questionable. I mean --  
25 Q. So, for example, if -- if I were to say to you what --

1 what is the organic source of authority for the  
 2 Palestinian Authority to have a police department,  
 3 wouldn't that be the interim agreement?  
 4 A. Yeah, but then they -- okay, it's an organic source; but  
 5 then they need to establish the legal -- the legal  
 6 structure. Right?  
 7 Q. But --  
 8 A. And then this will be the law which is applicable.  
 9 Yeah, but -- in that sense, yes. So you could --  
 10 yeah, I would then -- in that sense, I would -- as  
 11 a source of constitution -- yeah. Yeah.  
 12 Q. Certainly the interim agreement binds the parties who  
 13 signed it?  
 14 A. Yeah, yeah. Of course, of course. I -- maybe I was  
 15 more referring to the legislation that is applicable in  
 16 the military court.  
 17 Q. I see.  
 18 A. Yeah.  
 19 Q. I see. All right.  
 20 A. No, no, not only, no, it's not true, because I put  
 21 other -- yeah, but -- yeah, I would --  
 22 Q. You would include it?  
 23 A. Probably, yeah. Yeah.  
 24 Q. All right. So I want to talk with you -- and by the  
 25 way, I didn't sort of do the courtesies at the beginning

1 of our conversation, but if you'd like to pause and take  
 2 a break at any time, you just let me know; it's okay.  
 3 A. Yeah, I know. Thank you.  
 4 Q. Okay.  
 5 I'd like to ask you a little bit about sources of  
 6 international law.  
 7 A. Yeah, please.  
 8 Q. There are conventions or treaties which are binding by  
 9 virtue of ratification; right?  
 10 A. Right.  
 11 Q. And unless the treaty or convention is a norm-creating  
 12 convention, or has norm-creating provisions, the  
 13 convention is only binding -- or the treaty is only  
 14 binding on the parties that ratify it; is that fair to  
 15 say?  
 16 A. Unless it represents a customary norm that has emerged,  
 17 or -- since what the -- crystallized within these  
 18 customary laws.  
 19 Q. So -- but in any case, Israel is indeed a signatory to  
 20 the Fourth Geneva Convention; right?  
 21 A. And the Human Rights Convention, yeah.  
 22 Q. And the Human Rights Convention? Which Human Rights  
 23 Convention is it a signatory to?  
 24 A. The Convention Against Torture. Let's say the relevance  
 25 for here is the Convention Against Torture and the

1 International Covenant on Civil and Political Rights,  
 2 since the '90s.  
 3 Q. Okay. And then -- and then there are -- sort of  
 4 a second source of law we might consider to be  
 5 norm-creating provisions, customary international law?  
 6 A. "Second"? Why customary are second? No.  
 7 Q. Well, the first one I identified was treaties --  
 8 A. Ah, okay, yeah, but it's not in here, or it's simply --  
 9 yeah. Okay.  
 10 Q. Sure. Okay, fair enough. I'm not --  
 11 A. Yeah.  
 12 Q. I'm not contending that one is --  
 13 A. Okay.  
 14 Q. -- superior to the other.  
 15 A. Yeah, okay.  
 16 Q. Customary international law results from a general and  
 17 consistent practice of states followed by a sense of  
 18 legal obligation; correct?  
 19 A. Correct.  
 20 Q. It's been said that the -- within the relevant states,  
 21 the will to follow such a norm has to be formed that the  
 22 rule will become law if a relevant number of states who  
 23 share this will is reached; is that right?  
 24 A. Can you read this again, more fluently? Yeah, I mean --  
 25 Q. I think that the concept is -- it's not merely that

1 a number of states follow a practice, but they have to  
 2 have the will that it become law, the practice.  
 3 A. No, they have to believe that -- yeah, that this is the  
 4 law, that they are doing it because it is the law. An  
 5 opinion juris system, yeah.  
 6 Q. I'm sorry --  
 7 A. Oh, it's the Latin word, "opinion juris," but it's  
 8 not --  
 9 Q. J-U-R-I-S?  
 10 A. Yeah. Yeah.  
 11 Q. In order for something to be a norm-creating provision,  
 12 state practice should have been both extensive and  
 13 virtually uniform in the sense of the provision invoked;  
 14 would you agree with that?  
 15 A. The question of "extensive" is always a question.  
 16 I mean, do you need a lot of country, or do you need the  
 17 country that can exercise this, because, you know -- so,  
 18 yes, but -- it's true that anyway, identifying a custom  
 19 is not an easy task; this, I agree.  
 20 Q. The Fourth Hague Convention has provisions on the law of  
 21 war; right?  
 22 A. (Witness nods.)  
 23 Q. You have to speak.  
 24 A. It -- it was a question?  
 25 Q. Yes. But -- I'll say it again.

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1 A. Yeah.  
 2 Q. I'll ask it in a different way --  
 3 A. Yeah, sorry, yeah.  
 4 Q. -- to make sure -- does the Fourth Hague Convention --  
 5 A. Ah, that -- if it's a custom.  
 6 Q. Well, first of all, the Fourth Hague Convention deals  
 7 with the laws of war; right?  
 8 A. Mm-hmm, yes.  
 9 Q. And has that entered into customary international law,  
 10 in your opinion?  
 11 A. Yes.  
 12 Q. What is your evidential basis for that view?  
 13 A. It was stated by -- in the Hague regulation. I'm also  
 14 referring to the annexed Hague regulation. It was  
 15 recognized as such, for example, by the Israeli High  
 16 Court of Justice; by the ICJ, International Court of  
 17 Justice; by the ICRC customary study, so ...  
 18 Q. Now I want to ask you about a third source of  
 19 international law, which really is maybe a special case,  
 20 or a third form of international law, which I think of  
 21 as a special case of norm-creating provisions. And  
 22 that's jus cogens, or preemptory norms. Could you  
 23 explain what that is?  
 24 A. Yeah. So if we were speaking about hierarchy, this was  
 25 the first one to sit; right?

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1 Q. Mm-hmm.  
 2 A. This has what we -- what we call the nonderogable right,  
 3 and they have -- if you compare it to national law, they  
 4 have, like, a constitutional statute, okay, we can say,  
 5 compared to domestic legislation, which means that all  
 6 legislation have to comply with this jus cogens. And it  
 7 is a nonderogable rule.  
 8 Q. Is it fair to say that if a norm has achieved the status  
 9 of jus cogens, under no circumstances is it permitted to  
 10 derogate from it?  
 11 A. Yes.  
 12 Q. And some -- some forms of -- well, some actions that  
 13 I think you and I would agree fall into the jus cogens  
 14 category would include piracy?  
 15 A. Yes.  
 16 Q. Slavery?  
 17 A. Yes.  
 18 Q. War crimes?  
 19 A. War crime -- where do you bring this citation --  
 20 Q. Perhaps that's too broad of a term --  
 21 A. Yeah, it may be. I would say torture achieved the jus  
 22 cogens.  
 23 Q. Genocide?  
 24 A. Genocide, yes.  
 25 Q. Others that you can think of?

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1 A. These are the -- usually the ones that -- yeah.  
 2 Q. Those are the usual suspects?  
 3 A. The usuals, yeah.  
 4 Q. I want to ask you about one other concept --  
 5 A. Mm-hmm.  
 6 Q. -- in international law, general international law,  
 7 which is lex specialis.  
 8 A. Mm-hmm.  
 9 Q. What is that?  
 10 A. In public international law, you have different rules to  
 11 solve problems of conflict of law. So one of them is --  
 12 for example, that a later norm should prevail on an  
 13 older one; this is one rule.  
 14 Another rule is the rule of lex specialis, the --  
 15 the one that is better specified -- right, speciality,  
 16 specified -- is the applicable norm.  
 17 So these norms come from the conflict of law norms.  
 18 Q. So it's -- the specific trumps the general?  
 19 A. Yes, exactly.  
 20 Q. And it can take the form of a derogation from general  
 21 law; right?  
 22 A. It can be different, yes.  
 23 Q. So I'm thinking of, like, in --  
 24 A. I mean -- yeah.  
 25 Q. Like, the example I'm thinking of is like Article 4 of

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1 the ICCPR. So that article provides for exceptions to  
 2 certain --  
 3 A. A derogation clause.  
 4 Q. -- rights.  
 5 A. Yeah.  
 6 Q. Right. Certain -- it's a -- Article 4 of the ICCPR is  
 7 a derogation clause; right?  
 8 A. Right.  
 9 Q. And it -- it allows for derogation of some of the  
 10 provisions of the ICCPR --  
 11 A. Right.  
 12 Q. In times of public emergency --  
 13 A. Right.  
 14 Q. Is that fair to say?  
 15 A. Yes.  
 16 Q. And that would be an example of lex specialis?  
 17 A. Of -- no, I -- no, because -- of what? Of the general  
 18 rule?  
 19 Q. Where -- where a state --  
 20 A. It's a derogation clause within the treaty.  
 21 Q. Right. And so when -- when a State declares a public  
 22 emergency --  
 23 A. Yeah.  
 24 Q. -- and says, "We're -- we're going to derogate from this  
 25 generally applicable provision because we're in



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1 a special circumstance," they've in essence created lex  
2 specialis?  
3 A. No, we don't call it "lex specialis"; it's a derogation  
4 from the obligation and -- you know, and the article  
5 requires for the extent strictly required for the  
6 time -- for the time of national emergency, I think is  
7 the wording, actually.  
8 Q. And then another -- I'm sorry?  
9 A. No, no, I'm just trying to remember if it's written  
10 "national threat" or "national security" -- I don't  
11 remember the wording exactly.  
12 Q. "Public emergency," I think, is the wording.  
13 A. I don't know. We need to check.  
14 Q. We can look it up.  
15 A. Yeah, it's not ...  
16 (Discussion off the record.)  
17 MR. YALOWITZ: Let's do a break now, take a break now.  
18 (A break was taken.)  
19 (10:35 a.m.)  
20 BY MR. YALOWITZ:  
21 Q. So I want to ask you also -- I read that lex specialis  
22 could be an elaboration or application of general law to  
23 a particular situation; do you agree with that?  
24 A. "Elaboration of the law"? What do you mean,  
25 "elaboration of the law"?

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1 Q. Sure. So -- so parties are entitled to establish  
2 specific rights or obligations to govern their behavior  
3 against the backdrop of a more general obligation;  
4 right?  
5 A. Parties -- parties to what? To a treaty?  
6 Q. For example.  
7 So -- maybe if I gave you an example --  
8 A. Yeah. Maybe.  
9 Q. -- it might be helpful.  
10 A. Maybe.  
11 Q. Okay. There is a convention on the law of the sea;  
12 right?  
13 A. Mm-hmm, mm-hmm.  
14 Q. You have to --  
15 A. Yes. Yes.  
16 Q. And -- and then parties can decide -- rather than apply  
17 the exact provisions of the convention of the law of the  
18 sea, they're going to reach an agreement to specify how  
19 that might apply to them in their particular situation?  
20 A. So you might call, sometime, reservations for a general  
21 treaty, for example; this may be the word,  
22 "reservation." For example, if they join a treaty, but  
23 some provision, it doesn't want -- doesn't fit to  
24 advice, you say, "I reserve from this provision."  
25 And now, if you do another bilateral agreement, it

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1 depends if the treaty lets you to do it or not. But  
2 I mean, normally, you -- with great reservation, yeah.  
3 Q. So -- so the ICJ said in the North Sea cases it's well  
4 understood that in practice, rules of international law  
5 can, by agreement, be derogated from in particular cases  
6 or as between particular parties.  
7 A. Yeah.  
8 Q. You agree with that?  
9 A. Yeah, yeah. Yes. But lex specialis is not -- yeah, you  
10 could also connect lex specialis in the sense that --  
11 I will -- I will use "derogation," better than "lex  
12 specialis," okay, but it's term -- yeah.  
13 Q. Excellent.  
14 A. Okay.  
15 Q. Okay. I don't really care what word we call it.  
16 A. Exactly. Yeah.  
17 Q. It's the idea that matters. Okay.  
18 So do you know, in general, about how many  
19 prosecutions there have been in the Israeli military  
20 courts since 1967?  
21 A. The number of cases prosecuted -- I cannot tell you the  
22 exact figure. I read -- one statistic was speaking from  
23 the '90s until -- until 2007, I think, was one hundred  
24 -- let me -- (French spoken) --  
25 Q. 160,000?

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1 A. Yeah, 150,000 cases. But not from '67; from the '90s.  
2 So I don't know the exact, but it's -- a huge amount  
3 of cases. I think -- it's one statistic that I read,  
4 I didn't count. I don't know.  
5 Q. Does that sound about right, directionally? Do you know  
6 what I mean by "directionally"? Like, it's not that  
7 there've only been 50 cases; it's been thousands and  
8 thousands --  
9 A. Yes.  
10 Q. -- of cases?  
11 A. Yes.  
12 Q. And does that statistic -- did the statistic that you  
13 read, did it include administrative detentions, or was  
14 it simply prosecutions?  
15 A. I can't tell; I'm sorry. I don't remember. Yeah.  
16 Q. In -- I have it right that in the military courts of  
17 Israel, if a defendant chooses to have counsel, he or  
18 she is entitled to have counsel; right?  
19 A. The -- the defendant are entitled to have a -- a lawyer,  
20 by law. Now the law restricts sometimes the meeting  
21 with the lawyer. During the interrogation, it can be up  
22 to 30 days without seeing a lawyer, which is longer than  
23 in Israel. Then you have quite -- problems of access,  
24 because -- during interrogation, they are detained in  
25 Israel, the arrested people; and then the lawyer --



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1 Palestinian lawyers cannot access these places.  
 2 Q. By the time a person has been -- by the time a person  
 3 has been convicted in the military courts of Israel, he  
 4 or she shall, if he chooses or she chooses to have  
 5 a lawyer, can retain one; right? I mean, I understand  
 6 there's some nuance about how soon they can get one; but  
 7 at some point, if they want a lawyer to represent them  
 8 during the course of a trial, they're entitled to that.  
 9 Right?  
 10 A. I don't think it's a nuance where you are investigated  
 11 and you don't know exactly your rights, and then you  
 12 give a confession that sometimes is a forced confession;  
 13 and then, when you meet with your lawyer, you already  
 14 have your confession.  
 15 And this is very important when you meet your  
 16 lawyer. The entire point is to meet the lawyer during  
 17 your interrogation. When you do it after, yes, you have  
 18 a lawyer that will administrate your trial in the  
 19 military court -- and do a plea bargain, usually.  
 20 Q. And the -- the defendant who does not plead is entitled  
 21 to appeal; right?  
 22 A. There is an appeal to -- there is the -- the military  
 23 court, they have two instance; first instance and  
 24 military court of appeal. Yeah.  
 25 Q. Do you have a sense of how many appeals in the military

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1 courts there have been since 1967?  
 2 A. The military court of appeal was established in '99.  
 3 Now, how many appeals were accepted for the defendant?  
 4 This is what you are asking me? Or how many cases?  
 5 Q. How many appeals were filed?  
 6 A. No, I don't know. I mean, this is statistic; I don't  
 7 remember.  
 8 Q. Is it -- would it be fair to say thousands?  
 9 A. I can assume, but I don't have the numbers. Yeah.  
 10 Q. You've read reported cases from the military court of  
 11 appeals?  
 12 A. Yes.  
 13 Q. Hundreds?  
 14 A. I haven't read hundreds; I won't say this. But  
 15 I read -- I read -- I don't think hundreds.  
 16 Q. Are there hundreds?  
 17 A. Hundreds? Again, I -- I don't know how many.  
 18 I didn't --  
 19 Q. But one could check?  
 20 A. Yeah. I mean, I don't know.  
 21 Q. All right. Fair enough.  
 22 Are there -- are there human rights lawyers who  
 23 practice in Israel?  
 24 A. Yes.  
 25 Q. Are they highly regarded?

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1 MR. SATIN: Objection, calls for speculation.  
 2 You can answer, if you can.  
 3 A. I don't -- I don't really -- by whom?  
 4 BY MR. YALOWITZ:  
 5 Q. Well, let me --  
 6 A. By the -- yeah.  
 7 Q. Well, let me ask a different question.  
 8 So would you consider Avigdor Feldman a human rights  
 9 lawyer?  
 10 A. He's a criminal law lawyer, and he did human rights  
 11 cases, yeah.  
 12 Q. And would you agree with me that his -- from  
 13 a reputational perspective, he's highly regarded as  
 14 a lawyer?  
 15 MR. SATIN: Objection, lack of foundation.  
 16 If you know, you can answer.  
 17 A. It depends by whom. I don't understand who's -- who you  
 18 -- if judge of the court, or the general public, they  
 19 probably don't know him, even. I don't know.  
 20 Q. So -- well, do you regard --  
 21 A. If the question is if there are good lawyers, there are  
 22 good lawyers in Israel, yes.  
 23 Q. Yeah, that's -- that's the question.  
 24 A. Okay.  
 25 Q. And they -- and then, like Michael Sfard; is he

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1 a well-regarded lawyer, in your opinion?  
 2 MR. SATIN: Objection, calls for speculation.  
 3 But you can answer if you know.  
 4 A. I -- I don't know what you mean by "well regarded."  
 5 BY MR. YALOWITZ:  
 6 Q. All right. I --  
 7 A. It's -- I mean ...  
 8 Q. All right. It's fine.  
 9 Okay. So you mentioned that you've taught on the  
 10 subject of the way the Supreme Court of Israel has dealt  
 11 with matters relating to the occupation; is that right?  
 12 A. Yes.  
 13 Q. And do I have it right that the jurisdiction of the  
 14 Supreme Court of Israel includes not only appellate  
 15 jurisdiction, but a right of access of original  
 16 jurisdiction for petitions relating to government  
 17 actions?  
 18 A. Yes. The High Court of Justice is sitting as a -- as  
 19 the High Court of Justice and as the Supreme Court. So  
 20 one of the function of the High Court of Justice,  
 21 individual and organization can submit petitions. Yeah.  
 22 Q. And has it -- has it been your experience that the High  
 23 Court of Justice has accepted petitions addressing the  
 24 ways in which the Israeli military court system  
 25 operates?

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1 A. Can you be more specific when this question? On the  
 2 military courts -- yeah.  
 3 Q. So to take an iconic example --  
 4 A. Yeah.  
 5 Q. -- the PICATI case: Do you know that acronym, Public  
 6 Committee Against Torture in Israel?  
 7 A. Yeah. Which one? From '99, or 2006?  
 8 Q. From '99.  
 9 A. From '99, yeah.  
 10 Q. Right.  
 11 A. The torture case; that's --  
 12 Q. That's an iconic case --  
 13 A. Yeah.  
 14 Q. -- right?  
 15 You have to --  
 16 A. Yes.  
 17 Q. -- wait for me to finish, and then speak. You're doing  
 18 pretty well, but ...  
 19 That's an iconic case; right?  
 20 A. "Iconic"; it means "landmark," or ... ?  
 21 Q. Yeah, very famous.  
 22 A. "Famous"; it is a famous case, yes.  
 23 Q. And that -- that relates to GSS investigations; right?  
 24 A. Yes.  
 25 Q. And GSS investigations are of security prisoners; right?

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1 A. Yes.  
 2 Q. And then if they're charged with crimes, those crimes  
 3 are prosecuted in the military courts; right?  
 4 A. Usually; not always. They can be also in civilian in  
 5 Israel. It depends, because -- but in some cases, it  
 6 will be in military court. Most of them.  
 7 Q. Most of them?  
 8 A. Most of them.  
 9 Q. Fair enough.  
 10 And are there other cases that the High Court of  
 11 Justice has addressed dealing with aspects relating to  
 12 prosecutions in the military courts?  
 13 A. I don't know if you will -- for example, there was the  
 14 -- reviewing an order concerning detention in 2003.  
 15 There was recently, again, a reviewing -- I mean, it is  
 16 still pending, about the -- how long you can be arrested  
 17 before seeing a judge. You know, it was eight days, and  
 18 now it is -- it is before the court.  
 19 There are different cases, yeah.  
 20 Q. Can you give us an estimate as to how many cases the  
 21 High Court of Justice has decided on the merits in which  
 22 some aspect of the system -- from arrest through to  
 23 detention, prosecution, appeal, imprisonment -- that the  
 24 entire sort of cycle of a criminal encounter with the  
 25 judicial system -- let me start the question over.

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1 A. Mm-hmm.  
 2 Q. It's too long a question.  
 3 A. No, no, I follow. Yeah.  
 4 Q. Okay. Can you give me a sense of how many cases the  
 5 High Court of Justice has decided on the merits relating  
 6 to encounters between residents of the West Bank or Gaza  
 7 and the military system of justice?  
 8 A. With the issue of administrative detention, or only  
 9 prosecution of criminal case? Only prosecution, let's  
 10 say; okay? I will answer only --  
 11 Q. As you -- as you wish.  
 12 A. Yeah. I will answer only related to issue related to  
 13 prosecution, except of administrative detention.  
 14 Now, there were also some cases on condition of  
 15 detention; would you include them also?  
 16 Q. Yes. Yes.  
 17 A. I will say dozen -- maybe ten, something like this.  
 18 Q. And do you have a sense as to how many petitions there  
 19 have been presenting questions to the High Court of  
 20 Justice relating to the real -- relating to the  
 21 administration of justice in the military court system?  
 22 A. I don't know.  
 23 Q. Fair to say hundreds?  
 24 A. But then -- and then the -- you think that -- I mean,  
 25 your point is they were -- the State agreed, and they

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1 didn't have to deliver a judgment? Like, there was --  
 2 Q. No, no --  
 3 A. -- an agreement between the sides? Or what do you mean?  
 4 Q. No, no. So -- so my question was intended --  
 5 A. Because this happens also. You know.  
 6 Q. Sure.  
 7 My question -- it's a fair request for  
 8 clarification.  
 9 A. Mm-hmm.  
 10 Q. My question was more broadly: A petition to the High  
 11 Court of Justice, I suppose, could end with -- with an  
 12 order in favor of the petitioner, or an order in favor  
 13 of the State, or if you will, a plea bargain, which is  
 14 what your -- right? Some form of an agreement?  
 15 A. Yeah.  
 16 Q. Of any of those three outcomes, how many petitions to  
 17 the High Court of Justice relating to the military court  
 18 system do you believe have been commenced?  
 19 A. "Commenced"? What does it mean, "commenced"? Ah,  
 20 "commenced."  
 21 Q. "Filed."  
 22 A. "Filed"?  
 23 Q. Yes.  
 24 A. I don't know. I don't know how many. You need to look  
 25 for the -- I don't know how many.

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1 Q. Would you say hundreds?  
 2 A. No.  
 3 Q. Less?  
 4 A. It's difficult for me to assess this. How -- I mean,  
 5 you know, it's something ...  
 6 Q. All right.  
 7 Has the High Court of Justice applied the Fourth  
 8 Geneva Convention to the military courts in Israel?  
 9 A. Yes.  
 10 Q. How many times?  
 11 A. In one particular case, there was the Mareva case; that  
 12 was in 2003. And then, when he was checking also the  
 13 condition of detention, he referred to the Geneva  
 14 Convention. How many times -- again, since we are in  
 15 a question of numbers; I'm not -- I'm not -- I'm not  
 16 sure of numbers.  
 17 Q. Has the High Court of Justice applied the Fourth Hague  
 18 Convention to the --  
 19 A. The Hague regulation, yes.  
 20 Q. And can you think of some cases, off the top of your  
 21 head, in which that has happened?  
 22 A. Relating to the military courts?  
 23 Q. Yes.  
 24 A. But military court is less relevant to Hague regulation;  
 25 it's more the Geneva Convention.

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1 Q. So -- so let me ask, then, a broader question.  
 2 A. Broader; yeah.  
 3 Q. Has the High Court of Justice applied the Hague  
 4 regulations to conduct of the Israeli military in the  
 5 West Bank and Gaza?  
 6 A. Yes.  
 7 Q. How many times?  
 8 A. I don't know how many times --  
 9 Q. So -- so what are --  
 10 A. -- but in all the -- in all the petitions dealing with  
 11 the -- with the army -- with the Occupied Territories,  
 12 it first says that it is a belligerent occupation;  
 13 applicable law is the Hague regulation and the Fourth  
 14 Geneva Convention. I mean, usually, this is the opening  
 15 of the -- there were a lot of cases.  
 16 Q. That's what I'm sort of getting at. Maybe not there's  
 17 an exact number, but would you agree with me that it's  
 18 well established in Israel that when evaluating matters  
 19 relating to the military conduct in the West Bank and  
 20 Gaza, the courts begin with the Geneva Convention and  
 21 The Hague regulations.  
 22 A. It applies -- yes.  
 23 Q. Okay.  
 24 To your knowledge, has there been any case decided,  
 25 either by the military courts themselves or by the High

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1 Court of Justice, that has addressed whether the  
 2 military courts are properly constituted within the  
 3 meaning of Article 66 of the Fourth Geneva Convention?  
 4 A. This -- I know that there's never been a petition on  
 5 this.  
 6 Q. There's -- there's never been even a petition?  
 7 A. No, there's never been a petition on this question.  
 8 Q. No human rights group has ever raised this as an  
 9 argument within Israel?  
 10 A. Specifically on the military courts, there were much  
 11 less cases that any other issue related to the -- for  
 12 example, conduct of hostilities, or settlements, or  
 13 whatever. Most of the cases were dealing with due  
 14 process issue, but we see that even today, we still have  
 15 a petition -- a very recent one was demanding the  
 16 translation of the indictment and the cases.  
 17 These courts, since '67, are doing it, and we have  
 18 this petition only in 2013, or '12. So you see, it's  
 19 a question of maturing, to bring cases to the petition,  
 20 to -- to have this -- and the issue of military courts  
 21 were less -- this issue of structure were not brought to  
 22 the High Court of Justice.  
 23 (Discussion off the record.)  
 24 BY MR. YALOWITZ:  
 25 Q. Okay. Thank you.

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1 A. You're welcome.  
 2 Q. Do you -- have you ever compared and contrast the  
 3 military courts sitting in the West Bank and Gaza,  
 4 before disengagement, on the one hand, with the military  
 5 courts in Israel that try soldiers for violation of  
 6 military law?  
 7 A. Never. And I -- I'm not at all an expert on the martial  
 8 court, if you mean the martial court. They are working  
 9 under Israeli law. And -- you know, it's a different --  
 10 different structure. I'm not at all an expert on this  
 11 issue. I've been focusing on the law of military  
 12 occupation in the military court.  
 13 Q. Do you know whether the appointment system in the -- in  
 14 the two courts are different, or the same?  
 15 A. I know exactly what the appointment system in the  
 16 military courts is, which is deriving from the military  
 17 order enacted by the military commander. So I can only  
 18 assume that it's not the same, because the military --  
 19 the martial court -- I don't know the (French spoken) --  
 20 the provision of how military court and martial court  
 21 are established, but it is a law enacted by the State,  
 22 and not a military order.  
 23 Q. So in order to know whether the appointment system is  
 24 the same --  
 25 A. We need to read the -- this law specific to the court

1 martial, yeah.  
2 Q. Have you done that?  
3 A. No.  
4 Q. Would you agree with me that jus cogens applies to the  
5 PLO and the PA?  
6 MR. SATIN: Objection. Compound question.  
7 A. Generally, international law apply to state. This is  
8 a law that is applicable to state. I say "generally,"  
9 because more and more -- the international law evolved  
10 to include also nonstate actors, and for sure in IHL,  
11 the rule of -- for example, in noninternational  
12 conflict, applied both to state and nonstate actors.  
13 But then, it depends: Human rights obligation, it  
14 is not very clear if they apply to nonstate actors.  
15 There is some authors that said yes, some authors said  
16 no. So when we speak about jus cogens, we'd better to  
17 think about a specific -- a specific --  
18 Q. A specific -- a specific norm?  
19 A. Yeah, what are we talking about, yeah. Because if it's  
20 something related to IHL relation during an armed  
21 conflict, which a nonstate actor is a part, of course,  
22 it is bound by it.  
23 Q. It is ... ?  
24 A. It is bound by the law, yeah.  
25 Q. Are you familiar with the 1977 Additional Protocol 1 to

1 the Geneva Convention?  
2 A. Of course.  
3 Q. And what is it?  
4 A. What it says? The protocol?  
5 Q. Yeah.  
6 A. You want me to cite you the entire article?  
7 Q. I do not. I trust that you could; I just --  
8 A. No, in what relation?  
9 Q. So it -- by its terms, it governs wars of national  
10 self-determination; is that right?  
11 A. The first protocol is a protocol that apply in  
12 international armed conflict. Now, what you are  
13 referring to is Article 14, and it's questioning when  
14 a conflict will be classified an international conflict.  
15 So, of course, it's state against state; it is an  
16 international conflict.  
17 And there is one provision in the protocol saying  
18 war or national liberation, which could be war of --  
19 against colonization, apartheid, occupation, would be  
20 seen as an international conflict.  
21 Q. And do you understand that the PLO indicated its intent  
22 to be bound by that protocol?  
23 MR. SATIN: Objection, calls for speculation.  
24 If you know ...  
25 A. Can you just repeat?

1 BY MR. YALOWITZ:  
2 Q. Sure. I --  
3 A. Is it intended to -- this was your question?  
4 Q. Sure. I believe I -- I believe I read that the PLO  
5 submitted to the designated authority some type of an  
6 accession to the 1977 Additional Protocol --  
7 A. When they did this? Recently?  
8 Q. No, I believe they did it --  
9 A. No? Something -- yeah.  
10 Q. I believe they did it a long time ago. Does that --  
11 A. Somewhat --  
12 Q. Is that familiar to you?  
13 A. If they wanted to accede, but -- I can't -- I can't say  
14 if they accede or not. I don't know.  
15 Q. In any case --  
16 A. Yeah.  
17 Q. -- we agree that -- that Protocol 1 -- Additional  
18 Protocol 1 applies to the PLO and the PA; right?  
19 MR. SATIN: Objection, compound question.  
20 A. First of all, Israel -- you know, Israel is not a party  
21 to this protocol, exactly because of this provision.  
22 And -- now, normally, the protocol would apply only  
23 reciprocally; it means that in a conflict, the protocol  
24 will apply only if both parties ratify the protocol.  
25 But then we need to look on the -- what provision

1 are we talking about? Because if there are customary  
2 laws, so anyone, anyway, they are bound.  
3 Now, you are asking me if the conflict with the PLO  
4 is an international armed conflict; this is actually  
5 your question. Right?  
6 Q. Well, you could answer that question. It wasn't my  
7 question, but I'm interested in your opinion on that.  
8 A. So my opinion, I think that Justice Barak well  
9 articulated this in the targeted killing case in 2006,  
10 and this is exactly what he said. He said that -- he  
11 was citing Professor Cassese there -- I think it was  
12 paragraph 18, but I'm not sure about the number of  
13 paragraphs; I think so. No, it was a very important  
14 paragraph and he was saying that when under occupation,  
15 the -- if you want to fight the occupation, it is an  
16 international armed conflict.  
17 So this is the legal analysis of the Israeli High  
18 Court of Justice. But they -- I'm not sure -- they  
19 won't apply Protocol 1 as such, only the customary one.  
20 Q. So it's a -- it's a preemptory norm that civilian  
21 populations, as such, as well as individual civilians,  
22 may not be the object of attack; right?  
23 A. This is for sure. And this is absolutely customary  
24 norm. And this is also a criminal norm, and -- yeah.  
25 I mean, the rule of distinction is the basic principle

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1 in IHL.

2 Q. It is -- it is peremptory norm that acts or threats of  
3 violence, the primary purpose of which is to spread  
4 terror among the civilian population, are prohibited;  
5 right?

6 A. Right.

7 Q. And people who attack civilians intentionally, while  
8 aware of their civilian status, are committing war  
9 crimes; right?

10 A. Yes.

11 Q. And the obligations not to do that are absolute; right?

12 A. Right. I mean, there is targeting as such; then you  
13 have the question of proportionality. I mean, you are  
14 probably aware of this proportion that says that  
15 sometimes you have may have civilians as casualties, but  
16 they must not be targeted as such, of course.

17 Q. So in your opinion, was the targeting of civilians  
18 during the Al-Aqsa Intifada, were those war crimes?

19 MR. SATIN: Objection, lack of foundation.

20 A. The killing of civilian is a crime. This is murder, for  
21 sure. I mean, if someone kills someone, this is a  
22 murder. Then whether it is a war crime, "yes" or "no,"  
23 then it depends whether it's a conflict; it depends on  
24 different issues. Right? But of course, it's a crime.

25 BY MR. YALOWITZ:

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1 Q. And you're aware -- or are you aware of arguments that  
2 were put toward to justify or excuse suicide bombings  
3 and other attacks on Israeli civilians?

4 A. I'm not aware of jurists saying that it's legal;  
5 absolutely not. I've never read something like this.

6 Q. Have you -- did you ever read statements by Palestinian  
7 politicians trying to justify attacking Israeli  
8 civilians?

9 MR. SATIN: Objection. Assumes facts not in evidence. Lack  
10 of foundation.

11 A. If I've ever -- I don't -- I don't know. I don't  
12 remember. I -- maybe I've heard once -- I don't know.

13 BY MR. YALOWITZ:

14 Q. So for example, did you ever hear anyone say that the --  
15 that the illegal status of settlements in the West Bank  
16 is a justification for attacking civilians?

17 A. This is not a legal stand. It can't be a legal stand.  
18 I don't know if people said this; I don't know.

19 Q. If anyone said that, they would be wrong; right?

20 That's not a good question.

21 A. Okay.

22 Q. Let me ask you a different question.

23 You agree with me that the status -- that the legal  
24 status of settlements in the West Bank does not justify  
25 attacks against Israeli civilians; right?

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1 A. Of course.

2 Q. And you agree with me that anyone who is not a combatant  
3 is a civilian; right?

4 A. Yes.

5 Q. You agree me that reprisals or retaliation against  
6 civilians is absolutely prohibited; correct?

7 A. Absolutely.

8 Q. There is no legal excuse or justification for that,  
9 whatsoever; right?

10 A. Absolutely.

11 Q. You agree with me that under international humanitarian  
12 law, failure by one party to a conflict to respect the  
13 laws of war does not relieve the other party of its  
14 obligation to respect those laws; right?

15 A. Absolutely.

16 Q. That obligation is not premised on reciprocity; right?

17 A. Yes.

18 Q. You agree with me that -- well, are you familiar with an  
19 organization called Human Rights Watch?

20 A. Yes.

21 Q. And do you -- is it reasonable for people in your field  
22 to rely on reports by Human Rights Watch?

23 A. Not -- rely -- the legal analyze, no, because the legal  
24 analyze, I don't know -- the legal analyze, I rely on  
25 academic journals and on professor -- academic --

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1 judges, et cetera. Of course, Human Rights Watch, you  
2 know, they are sometimes written by my students; you  
3 know?

4 But some of the -- it could be interesting to -- as  
5 a source of facts; sometimes this can be -- not as  
6 a source, but as a report, and then you can look for the  
7 facts and ...

8 Q. So I'm sure, if they're written by your students, they  
9 must be excellent work.

10 A. Yeah.

11 Not -- so I mean -- what I mean by my answer is it  
12 depends; what do you mean "to rely on it"? You know?

13 Q. Fair enough.

14 A. Yeah.

15 Q. What I was thinking of is not the legal analysis --

16 A. Mm-hmm.

17 Q. -- but the facts and data reported.

18 A. Okay. So again, this is always a problem with facts;  
19 right? Who reports on the fact, and how do you know  
20 they are reliable? So for me, as -- if it's in the  
21 context of the research or whatever, of course you need  
22 to have -- you gather information. So this can be one  
23 source of information. But then you will look for what  
24 source they receive this; right? Maybe it's the press,  
25 and then you go to press, and then you try -- but of



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1 course it remains -- it remains what it is; you know?  
 2 Q. So -- so are you familiar with the Human Rights Watch  
 3 report about the suicide bombings during the Al-Aqsa  
 4 Intifada?  
 5 A. I must say that no, I'm not reading all their reports.  
 6 I'm -- no. You know, there are so many reports on  
 7 Israel and Palestine, and so many NGOs, this one --  
 8 Human Rights Watch, in general, I don't read so much;  
 9 I prefer to read local -- like local NGOs, mostly  
 10 I read. But you know, sometimes I can read Human Rights  
 11 Watch, and Amnesty, but I don't read all their reports.  
 12 Q. Do you have a view on whether the PA and the PLO incited  
 13 violence during the Al-Aqsa Intifada?  
 14 A. I have absolutely no -- no information of that. I never  
 15 worked on this question. I don't know.  
 16 Q. All right. So I want to ask you some questions about  
 17 structure and process in judicial systems generally.  
 18 A. Yeah.  
 19 Sorry, would you mind if I go to the toilet?  
 20 Q. Of course.  
 21 (11:14 a.m.)  
 22 (A break was taken.)  
 23 (11:24 a.m.)  
 24 BY MR. YALOWITZ:  
 25 Q. Would you agree with me that the form that a court takes

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1 is not subject to any customary norm?  
 2 MR. SATIN: Objection, vague.  
 3 A. Yes, could you rephrase this?  
 4 BY MR. YALOWITZ:  
 5 Q. Sure. So for example, there's no customary norm that  
 6 requires an adversarial system instead of an  
 7 inquisitorial system; right?  
 8 A. Ah, specifically on this, so -- of course there are  
 9 customary norms regarding due process issues; yes, of  
 10 course.  
 11 Now, the important issue that you will have a due  
 12 process, of course inquisitory process and adversarial  
 13 are both legitimate; I mean, you have wonderful  
 14 countries, like France, with the inquisitory system, and  
 15 you have wonderful state like the UK with the  
 16 adversarial system. So this is not a problem.  
 17 Q. Then having a jury or not having a jury is not the  
 18 subject of a customary norm; right?  
 19 A. No. There is no obligation to have a jury or not.  
 20 Q. Having judges elected does not violate customary norms;  
 21 right?  
 22 A. Judges need to be independent and impartial.  
 23 Q. But if a judge is elected, goes out and runs for  
 24 election, like in the United States -- we elect judges;  
 25 they run in elections; did you know that?

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1 A. Again, the judges go to election, when there are judges  
 2 or after the judges are --  
 3 Q. In order to become a judge --  
 4 A. Yeah.  
 5 Q. -- in many states --  
 6 A. Yeah.  
 7 Q. -- in the United States, you have to run for election,  
 8 like as if you were running for mayor.  
 9 A. To be elected as a judge, you mean?  
 10 Q. Yeah?  
 11 A. Yeah.  
 12 MR. SATIN: Objection as to the statements of counsel.  
 13 MR. YALOWITZ: Trust me; I'm right on this one.  
 14 A. Every -- no, every system need to have guaranteed to  
 15 have independent and impartial judges. So every state  
 16 has its own mechanism, and you need to verify the  
 17 mechanism. I don't know about this --  
 18 (Reporter clarification.)  
 19 MR. YALOWITZ: "Mechanism" --  
 20 A. Obligation to make sure that judges are independent and  
 21 impartial, and every state can have its own mechanism to  
 22 ensure that.  
 23 So specifically how is it in the US, I don't know;  
 24 but I'm sure in the US, they have check and balance to  
 25 make sure that they are independent and impartial.

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1 I won't believe otherwise.  
 2 BY MR. YALOWITZ:  
 3 Q. Having -- having a judge appointed by a military  
 4 commander, in and of itself, is not a violation of any  
 5 customary norm; right?  
 6 A. Can you just repeat? I didn't hear very well the  
 7 beginning.  
 8 Q. Sure.  
 9 A. Yeah.  
 10 Q. Having a judge who's appointed by a military commander  
 11 does not, in and of itself, violate any customary norm,  
 12 right?  
 13 A. Again, the customary norm is the judge need to be  
 14 independent and impartial. Now, what we had until 2004  
 15 in the Occupied Territory, under the military order that  
 16 was issued by the military commander, was that judges  
 17 are appointed by the recommendation of the prosecutor --  
 18 military prosecutor general -- and are appointed by the  
 19 military commander. So this raised serious question  
 20 about the issue of impartiality and independency,  
 21 structural.  
 22 Q. So -- so is it your view that having a judge appointed  
 23 by a military commander is, in and of itself,  
 24 a violation of a customary norm?  
 25 A. If it is appointed by a military commander through the



1 recommendation of the military prosecutor, I think that  
2 this is a violation of the requirement of independency,  
3 yes.

4 Q. And is -- is it -- is it your view that it's impossible  
5 to be independent because of the way in which a judge is  
6 appointed?

7 A. Structurally, it's -- let me answer from the beginning.

8 In order to ensure the judges are independent, we  
9 establish structural requirement to make sure, like,  
10 that they have tenure, like the way they're elected is  
11 independent, that they can function as they want. This  
12 is the issue of structure. Then you have the issue of  
13 any individual person, whether he is -- you know,  
14 independent, and et cetera.

15 I'm looking at the structural issue. There are  
16 basic requirements to be respected in order to maintain  
17 that structurally, the judges are independent. So if  
18 they need the promotion from the one who is depending on  
19 their election, it's problematic. If there are -- if  
20 there is no separation between the prosecution, the  
21 execution and the -- the judge themselves, this is  
22 problematic.

23 If judges are not enough competent to know the law,  
24 criminal law, it's problematic. Everything brings that  
25 there's a problem with independency of the judges.

1 And -- yes.

2 Q. So if you have a structure in which the chief executive  
3 is in charge of the prosecutor, and also in charge of  
4 nominating a judge for elevation, say, to a court of  
5 appeals, would that be a problematic situation, in your  
6 view?

7 A. What is "elevation"?

8 Q. Like -- promotion. Promotion from, say, a lower court  
9 to a higher court.

10 A. So the question was if the judge will promote another  
11 judge -- no, what was --

12 Q. No.

13 A. I'm sorry.

14 Q. So -- suppose you -- I'll start with giving you a  
15 hypothetical situation.

16 A. Yeah. Mm-hmm.

17 Q. Suppose you have a single individual who is in charge of  
18 the prosecutor, all prosecutors, and the same individual  
19 is responsible for nominating --

20 A. The judges?

21 Q. -- all judges. Would that be problematic, in your view?

22 A. Yes.

23 Q. In your view, would that violate international norms?

24 A. In my view, it violate the requirement of independency,  
25 and -- yes, that should be safeguarded by, inter

1 alia, the separation of powers, of course.

2 Q. And so is it -- the situation that I just described in  
3 my hypothetical, is that a violation of international  
4 law?

5 A. It is a violation of the requirement of independency,  
6 yes.

7 Q. Okay. Thank you.

8 Now I want to ask you about a statement you make on  
9 page 13 of your report.

10 A. Yes, I have it.

11 Q. Let's look together.

12 You wrote under subheading 2 -- first you quoted  
13 from Article 14 of the ICCPR; do you see that?

14 A. The second sentence?

15 Q. Yes.

16 A. Yes. Mm-hmm.

17 Q. And then following that, you wrote this means  
18 establishing separate courts for different groups of  
19 people based on a variety of factors, including national  
20 origin, is a contravention of Article 14.

21 A. Yes.

22 Q. Am I fairly summarizing that?

23 A. Yes, yes, absolutely.

24 Q. I didn't quote it --

25 A. No, no, it's fine.

1 Q. -- exactly.

2 And would you -- would you agree with me that --  
3 well, let me ask you this: How would you reconcile that  
4 statement with Article 66, which requires civilians from  
5 an occupied territory to be tried in a military court?

6 MR. SATIN: Objection. Misstates the evidence.

7 A. I don't see any contradiction. In occupied territories,  
8 the territorial jurisdiction is under the responsibility  
9 of the military commander, which can establish military  
10 court, as we discussed at the beginning.

11 Now, what happened during the years -- so in '67,  
12 when they were established, there is absolutely no  
13 problem, and people were under the jurisdiction of this  
14 court, Palestinian residents.

15 Now, with the time when Israeli presence start to be  
16 more and more important in the Occupied Territory, there  
17 is a situation created where you have people living in  
18 the same territorial jurisdiction, while the Palestinian  
19 will be under the jurisdiction of this court, and  
20 Israeli of another court.

21 This is the problem. So you can have a situation --  
22 and you have situation -- in which two people commit the  
23 exact same crime on the exact same place, and they will  
24 be under the jurisdiction of two different courts, two  
25 different criminal courts, two different rules of

1 procedure. And this is absolutely unacceptable from the  
2 point of view of international law and equality.

3 Q. So in your opinion, would it cure the problem if  
4 Israelis who commit security crimes were to be tried,  
5 de facto, in the military court sitting in the Occupied  
6 Territories?

7 A. What would cure the problem -- and I want to go back now  
8 to the fact that IHL and the law of military occupation  
9 was not designed to govern a civilian population during  
10 45 years. We must remember this. So any adaptation  
11 that we will do, modulation --

12 Q. Modulate?

13 A. Modulating the law, in order to fit, will be necessarily  
14 a kind of twisting and distortion of the law.

15 So I would like civilians not to be tried in  
16 military occupation by an alien army. I would like  
17 these civilians, including children, to have due process  
18 right by regular court.

19 Now, the fact that we have this occupation for  
20 45 years, it means that these courts are still  
21 functioning, but this is wrong. Now, if you would put  
22 Israeli civilians under the jurisdiction of this court,  
23 it won't cure their situation; it will only cure the  
24 situation of the kind of apartheid that had been  
25 established.

1 So for this, it would cure this difference; but to  
2 cure the situation is that military court should not try  
3 civilian, and as you know, they try them -- they expand  
4 the jurisdiction to try them for car traffic, drugs  
5 issues, stealing cars. I mean, it's not only -- you  
6 know, notorious terrorists that are being prosecuted.

7 Q. Well, our case is about notorious terrorists being  
8 prosecuted; right?

9 A. Everyone is entitled to due process, as the US Supreme  
10 Court in Hamdan said.

11 Q. Agreed. I -- I have no debate with you about -- about  
12 defendants being entitled to due process, and I want to  
13 ask you some questions about due process in our cases.

14 My question, really, was more directed to the  
15 specific thing that you're talking about in item 2 of  
16 your report, which is an unequal -- unequal prosecution,  
17 which -- I think we agree; let me -- let me just ask you  
18 a more pointed question.

19 You agree that as a de jure matter, Israelis are  
20 subject to prosecution in the military courts for crimes  
21 committed in the West Bank; right?

22 A. "Jury matter"?

23 Q. "De jure"; "de jure."

24 A. Ah. Okay. Sorry, I didn't understand this word.

25 De jure --

1 Q. Do you want me to say it again?

2 A. Yeah, can -- please, yeah.

3 Q. Sure; okay, as a legal matter --

4 A. Yes.

5 Q. -- Israeli citizens who commit crimes in the West Bank  
6 that threaten the security of the State of Israel are  
7 subject to prosecution in the Israeli military courts;  
8 right?

9 A. Yes.

10 Q. And your criticism is that in fact, when Israelis commit  
11 such crimes, they are prosecuted in the civilian courts  
12 in Israel; right? That is a criticism you render in  
13 section 2 of your report?

14 A. My criticism is that showing this practice, that as a  
15 matter of policy, Israeli citizens -- Jewish Israeli  
16 citizens are prosecuted in Israel civilian courts, its  
17 only reinforce the assumption that the military courts  
18 are political courts that are there, one, to exercise  
19 a kind of control, domination of this population, and to  
20 impose on them a due process rule that are less good.  
21 Because why would Israeli be prosecuted in Israel if  
22 this system was so great?

23 It's not only a question whether it's civil or  
24 military, it's the question of the intent of the rules  
25 that you have applied.

1 Q. So I want to be very, very specific: Your criticism in  
2 section 2 of your report that we're looking at, which  
3 begins on 13, is not of the military courts themselves;  
4 it's of the policy decision not to try Israelis in those  
5 courts. Is that fair to say?

6 A. In order to assess the legality of the courts, one has  
7 to look at the broader picture. And this is exactly  
8 what this article from 2011 is dealing with, meaning  
9 that, yes, the policy is that now there is a segregated  
10 policy; this is how you should name it.

11 Now, in this state of affairs, what we have -- we  
12 have two different kind of legal system, two different  
13 populations, and therefore the assumption is that these  
14 courts are not properly constituted, in the sense they  
15 are a political court. I mean, I said that.

16 Q. Do you think that -- well, how would you cure the  
17 problem you're identifying?

18 A. I will end occupation.

19 Q. Other than ending the occupation.

20 A. No, it's not "other," but this is the source of the  
21 problem, that we are applying -- okay, so I have two  
22 proposition. One is to end the occupation and to stop  
23 applying IHL, a law that was designed to apply for  
24 a short term, and not to govern 45 years a civilian  
25 population. Okay? They don't have any basics right,

1 but subordinate to an alien army, one -- this is -- this  
2 is the one. How can you govern a population with such  
3 a general law?

4 Q. So let me -- let me ask it specifically. Let's  
5 assume --

6 A. Yeah.

7 Q. -- that it is not within our power to establish peace  
8 between Israel and the PLO today.

9 A. Mm-hmm.

10 Q. But suppose you were -- you were asked by the powers  
11 that be in the State of Israel: "We would like to have  
12 a court system that protects the security of the  
13 citizens of Israel" --

14 A. Okay.

15 Q. -- "and recognizes the fact that we have -- we cannot  
16 withdraw from the West Bank. What kind of court system  
17 would you recommend?"

18 A. So we have to -- in order to cure the situation, we have  
19 to address several issues. First of all is stopping  
20 the -- a process of colonialization is directly linked  
21 to this, because this brought to be what we call the  
22 apartheid system in the West Bank, because you bring  
23 Israelis with their own law, and you have the  
24 Palestinians under the IHL law and military law,  
25 et cetera. So you have two people living in the same

1 place in the same population.

2 So what we will need to have is that the entire  
3 territorial jurisdiction, the entire West Bank, will be  
4 under the law of military occupation, unified. And what  
5 is interesting is that the settlements are bound by  
6 military orders, because they are established through  
7 military orders; right? But some of them were --  
8 I mean -- not established, but many of the -- many of  
9 the organization, through military orders.

10 But of course, their military orders are different  
11 from the military orders from the Palestinians. So you  
12 have an entire legislation which is different. And not  
13 only the legislation is different, but they were  
14 excluded from the jurisdiction of -- that had the  
15 territorial jurisdiction; right? We are talking  
16 territorial jurisdiction.

17 So in order to cure this, you need to make first of  
18 all a unified legal system in the West Bank, which is  
19 the law of the occupation, local law, Jordanian law,  
20 what we mentioned before. But creating these two zones  
21 of law, this is what brought to this segregated legal  
22 regime. So this is first.

23 Second is that the military court should not exceed  
24 the jurisdiction beyond the explicit and limited  
25 authority provided by the Geneva Convention, because it

1 is generally violating the right of civilian to be  
2 prosecuted by independent court. In general, it's  
3 better that civilian are prosecuted in civilian court.

4 Therefore, military court should not expand their  
5 jurisdiction. When I'm talking about "military court,"  
6 I'm talking about the legislation applicable and their  
7 own case law. Because, as you read in my 2007 article,  
8 military court keep expanding their jurisdiction over  
9 different crimes, that normally should not be under this  
10 jurisdiction; extraterritorial application of the law.  
11 So this is the kind of expanding on one hand and  
12 reducing on the other hand, which means to exclude the  
13 settlers.

14 So to cure, it's very simplicit to say, "Let's put  
15 them in Tel Aviv and prosecute them there." It's not --  
16 it's -- much more work will be needed to cure the  
17 situation.

18 But if I go back to -- just to summarize what I've  
19 said, so not to create two legal system, and one that  
20 the jurisdiction of the military court will be to  
21 restrict it to what has been provided.

22 So there are two -- you know ...

23 Q. I'm not sure I understood the part about Tel Aviv.

24 A. No, because you said to cure the -- no, no, no, sorry;  
25 right. I did -- you said that to cure the situation,

1 everyone should be prosecuted in the military court,  
2 yes. Sorry.

3 Q. That was the premise of my --

4 A. Yeah, yeah, yeah, sorry. Yeah.

5 Q. Not Tel Aviv.

6 A. Not Tel Aviv, yes. No, this is a mistake, sorry. Yeah.

7 Q. Okay. So now I want you -- well, you've just described  
8 a -- what we might call a hypothetical legal system for  
9 the West Bank.

10 A. What -- which one?

11 Q. The one where all Israelis and Palestinians are subject  
12 to the military courts, number 1, instead of having two  
13 systems, we have only one system; and number 2, the  
14 military court jurisdiction is limited to its core  
15 competency of things such as security crimes.

16 Have I fairly summarized --

17 A. It's not -- I'm not speaking about -- nothing  
18 hypothetical; I'm speaking about how the law should be,  
19 and how Israel, through the colonialization, created  
20 this dual legal system. But it's not a question of  
21 hypothetical; it's a question that in a territory, you  
22 have an applicable law, and you cannot have islands of  
23 places with a different law.

24 Q. I apologize; I was skipping ahead. So --

25 A. Okay.

1 Q. You've -- it's my fault.  
2 You've described changes that you would make to the  
3 law to make it comply with international law?  
4 A. Yeah, not only to the law; to a policy also.  
5 Q. And good policy.  
6 So now I want you to imagine a hypothetical in which  
7 the -- starting in the year 1999, the Israeli military  
8 commander and the Knesset and the prime minister all  
9 adopted the Weill plan, and the Weill plan was exactly  
10 as you've just described it.  
11 So this is my hypothetical. Do you understand the  
12 hypothetical, or should I elaborate on it further?  
13 A. Okay, if I'm a legal adviser of the State, and -- yeah,  
14 okay.  
15 Q. Right.  
16 A. But I mean, what are --  
17 Q. Okay.  
18 A. Yeah, what is the question? Yeah.  
19 Q. So -- so the question is: Would any of the 21 cases  
20 that we've described, the 21 cases that we are here  
21 about, would any of those 21 cases have come out  
22 differently in a legal regime that you've described?  
23 MR. SATIN: Objection, lack of foundation, assumes facts not  
24 in evidence.  
25 A. You are asking me whether it is important if the judge

1 is independent or not, if in any case they did the act,  
2 and they will be guilty. What can I answer for this?  
3 Is it a serious question?  
4 BY MR. YALOWITZ:  
5 Q. Yes, it's a very serious question.  
6 A. Yes? To ask me it's important if the judges are  
7 independent or not, I think it is important.  
8 Q. That wasn't the question. The question is: You've  
9 described -- well, let me try to be very clear.  
10 You've described changes that you would make to the  
11 structural regime. You talked about having Israeli  
12 citizens subject to military court law; right?  
13 A. (Witness nods.)  
14 Q. You have to speak.  
15 A. Yes, yes, sorry. Yes.  
16 Q. And you talked about restricting the jurisdiction of the  
17 military court to --  
18 A. Yes.  
19 Q. -- things that are --  
20 A. Security.  
21 Q. -- security-related?  
22 A. Yes.  
23 Q. Okay. In that -- and that would cure the issues you're  
24 describing in section 2 of your report; do I have that  
25 right? Part 2, section 2, starting on page 13.

1 A. Okay, part 2 of my -- part 2 of my opinion -- not part 2  
2 of my opinion; this section that you were referring to  
3 is analyzing -- is the second point of my analysis,  
4 whether the courts are properly constitute as the  
5 requirement of a military court to -- to function and to  
6 provide justice in criminal cases. So the first point  
7 was the point of independence and impartiality, and it's  
8 not referring to this.  
9 The second point of the opinion was that why -- why  
10 it is a not properly constituted court, because it is  
11 shown that through the years, it becomes a political  
12 court, in the sense that it's prosecuting not according  
13 to regular territorial jurisdiction, but according to  
14 the nationality of the person.  
15 So if this point will be cured, as you propose, it  
16 will simply mean that for -- the question whether the  
17 court are properly constitute. I will not say any more  
18 that it is a court that is political, in that sense.  
19 Q. Okay. I think I --  
20 A. Just if it is cured, hypothetically, yeah.  
21 Q. I think I understand your --  
22 A. Okay.  
23 Q. -- your views on that.  
24 And is it your opinion that a -- a person who enters  
25 into the territory of Israel and -- without a uniform,

1 and commits acts of violence against civilians for  
2 political purposes, has the right not to be tried in  
3 a military court?  
4 MR. SATIN: Objection to the ambiguous nature of "territory  
5 of Israel."  
6 You can answer, if you understand.  
7 A. Any person who commit a crime has the right of due  
8 process. This is the question. And to be tried by  
9 an independent, impartial and competent court. This is  
10 the requirement of international law, that the courts  
11 are independent, professional, impartial, and are rule  
12 of due process.  
13 Then, I don't know; you can constitute this as a  
14 military/civilian, but these are the requirements.  
15 BY MR. YALOWITZ:  
16 Q. There's nothing per se -- there's nothing per se  
17 improper about trying a person who commits a security  
18 crime in military court; is that fair to say?  
19 A. According to Article 66, the occupying power can  
20 establish military court to prosecute security offenses.  
21 Q. So the answer is yes?  
22 A. Yes. We've established that already.  
23 Q. Okay.  
24 I'm going to read some statements about due process,  
25 and I want to ask if you agree or disagree.



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1 A. Yes.  
 2 Q. Okay. "Due process, unlike some legal rules, is not  
 3 a technical conception but a fixed content unrelated to  
 4 time, place and circumstances."  
 5 Do you agree with that?  
 6 A. I'm sorry, I don't -- is it possible for me to read  
 7 this? Or if you can read it again, more fluently --  
 8 Q. I'll read it again.  
 9 A. Yeah.  
 10 Q. I'll read it again.  
 11 A. Just more -- yeah.  
 12 Q. Sure.  
 13 A. Sorry.  
 14 Q. "Due process ... is not a technical conception with  
 15 a fixed content, unrelated to time, place and  
 16 circumstances."  
 17 A. Yes, due process is not a fixed content -- due process  
 18 -- what do you want me to answer? If I agree --  
 19 Q. Do you agree with that?  
 20 A. -- with this statement?  
 21 Q. Yeah.  
 22 A. I think that any human rights that we have is a question  
 23 of context. And yes, I will agree with this also.  
 24 Q. Do you agree that the requirements of due process are  
 25 a function not only of the extent of the governmental

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1 restriction imposed, but also of the extent of the  
 2 necessity for the restriction?  
 3 MR. SATIN: Objection, compound question.  
 4 WITNESS: Can I answer it?  
 5 MR. SATIN: Yes.  
 6 A. Human rights, generally, can be -- can be balanced by  
 7 necessity needs and security needs, and then one needs  
 8 to see if the essence of the right is -- is not harm  
 9 beyond the restrictive necessity, yes, but we can agree  
 10 on this. I mean, human rights are a balance of needs;  
 11 yes.  
 12 BY MR. YALOWITZ:  
 13 Q. All right. I want to ask you some questions about your  
 14 opinion with regard to whether the military courts are  
 15 properly constituted.  
 16 A. Mm-hmm.  
 17 Q. We talked about one part of that, in a section of your  
 18 report; I want to ask you about some other ones.  
 19 First of all, is it your -- are you applying  
 20 Article 66 in that section of your report?  
 21 A. Which section? Sorry.  
 22 Q. Sure.  
 23 A. The second one, or third one?  
 24 Q. So the questions I'm going to ask you are limited to  
 25 part 2.

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1 A. 2 -- the -- apartheid. Okay.  
 2 Q. Which begins on --  
 3 A. Segregation.  
 4 Q. No, no; I'm sorry.  
 5 A. No?  
 6 Q. Part (ii), which begins on page 9 and runs through  
 7 page 17.  
 8 A. The entire section, yes.  
 9 Q. Okay.  
 10 A. Yeah.  
 11 Q. So as I understand --  
 12 A. Yes.  
 13 Q. Do you have that section in mind?  
 14 A. 1 and 2 -- yes, the numbers.  
 15 Q. Roman 2?  
 16 A. Yes, (ii), exactly.  
 17 Q. So as I understand your argument, you -- you have three  
 18 arguments that you make in this section. Impartiality  
 19 is the first argument you make; right? That's  
 20 section 1, impartiality and independence?  
 21 A. Lack of independence, and impartiality, yeah.  
 22 Q. And then part 2 --  
 23 A. 2.  
 24 Q. -- is unequal treatment?  
 25 A. Yes -- sorry, can I interrupt you?

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1 Q. Please.  
 2 A. Yeah, so if you want me just to structure the -- how it  
 3 was constructed, so the first part deals with the -- why  
 4 they don't -- are not impartial and independent. So  
 5 we're looking at the important procedure, the lack of  
 6 training, and the lack of separation of powers. So this  
 7 was this part of independence and impartiality -- and  
 8 competency; we can put it together.  
 9 And then the second part will be the fact that as  
 10 the court is a political court, because different  
 11 treatment is provided to different group of  
 12 nationality -- yeah.  
 13 Q. And then the third part is --  
 14 A. In page 17?  
 15 Q. Yes.  
 16 A. Yes.  
 17 Q. No, I'm sorry --  
 18 A. No?  
 19 Q. -- in pages 16 to 17, you offer a third argument, which  
 20 is --  
 21 A. Ah, yes, this one. Yes, yes. Sorry. Yeah.  
 22 Q. Which is about laws have --  
 23 A. The issue of publicity, yeah.  
 24 Q. Right. The laws have to be known, published --  
 25 A. Exactly.

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1 Q. -- and not retroactive?

2 A. Yeah.

3 Q. Okay. So I want to take you through those three things

4 and ask you some questions about them.

5 A. Let's go.

6 Q. With regard to impartiality and independence, the first

7 thing you point to is the appointment process?

8 A. Yes.

9 Q. And is it -- is it your view that Article 66 of the

10 Fourth Geneva Convention requires the appointing power

11 to be a military commander?

12 A. It required the court to be properly constituted and

13 nonpolitical. Then, every selection process need to be

14 reviewed under this prism.

15 Q. So -- bear with me for a minute.

16 Is it your view that the -- under Article 66, the

17 courts have to be military courts?

18 A. Article 66 grant the authority to establish courts. So

19 first of all, it's not an obligation; it's

20 a possibility. And it will be military court in the

21 sense that they are established by the military, because

22 the authority granted is the military commander.

23 Q. So could you look with me at Reisner's report for

24 a moment.

25 A. Which page?

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1 Q. Pages 16 and 17.

2 A. Mm-hmm.

3 Q. If I could ask you to read -- do you have 16 and 17 with

4 you?

5 A. Yes -- wow, it's long. No, it's 36 -- sorry, I'm

6 sorry -- page 16, or paragraph 16?

7 Q. Page 16, paragraph -- what I'd like you to do is to read

8 paragraphs 36(c) and (d) only.

9 A. Okay.

10 Yes, yes, this is what we said before, yeah.

11 Only (c), you wanted me to read?

12 Q. (c) and (d).

13 A. (d); sorry.

14 Yeah.

15 Q. Do you agree with Mr. Reisner's paragraphs 36(c) and

16 36(d)?

17 A. Yeah. As I said, it's the court that should be

18 established under the authority of the -- of the courts

19 of -- just -- again with the words, just -- but

20 I would -- yes, he mentioned "required." He did, like,

21 underlining "require." As I understand Article 66, the

22 occupying power may establish the court; this is how the

23 language -- if you want to open Article 66.

24 Do you have Article 66 with you?

25 Q. I think I do.

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1 A. So let's look at it.

2 Q. I suspect I do, in my --

3 A. Just to be sure on the wording.

4 Q. In my study materials.

5 Would you like a copy of --

6 A. No, no, I don't -- just let's read it once again.

7 Q. Shall I read it aloud?

8 A. Yes, maybe, yeah.

9 Q. "In case of a breach of the penal provisions promulgated

10 by it by virtue of the second paragraph of Article 64,

11 the occupying power may hand over the accused to its" --

12 A. "May."

13 Q. -- "properly constituted nonpolitical military

14 courts" --

15 A. Mm-hmm.

16 Q. -- "on condition that said courts sit in the occupied

17 country. Courts of appeal shall preferably sit in the

18 occupied territory."

19 So this confirms your view that --

20 A. They may. Yeah.

21 Q. The military commander is permitted to establish

22 military courts --

23 A. But not obliged to.

24 Q. But I think you would also agree that if they do

25 establish courts, they must be subject to the

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1 supervision of the military commander?

2 A. The court?

3 Q. Yes.

4 A. No, the courts are established by the military

5 commander.

6 What do you mean, "supervision"? That he supervises

7 the judges? No, I don't think so.

8 Q. So, for example, Pictet -- Pictet? Is that right?

9 A. Pictet.

10 Q. Pictet says -- is quoted in Reisner's paragraph 36d as

11 saying:

12 "The accused may only be brought before 'military

13 courts', that is before courts whose members have

14 military status and are subordinate to the military

15 authorities."

16 A. Yes, it is in the sense, I think, if we continue to read

17 his commentary, the idea is that -- and then we go back

18 to what we said before, that one cannot extend its own

19 legal system to occupied territories. This is the

20 point. Yeah.

21 Q. All right. So it's not the -- it's not the placement of

22 the courts within the military structure that's -- you

23 have to criticism of that; right?

24 A. This is the law. I mean ...

25 Q. All right.



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1 A. But the law also required it to be properly constituted  
2 and nonpolitical.

3 Q. And your criticism is the appointment process, rather  
4 than the -- rather than the supervising process?

5 A. Not only the appointment; it's all the points that  
6 I wrote in my opinion, that they are -- you know, it's  
7 every point separately, and especially the accumulation  
8 of all of these points, they make it not properly  
9 constituted and not nonpolitical.

10 In the long run, being 44 years working like this;  
11 we're not talking about courts doing this for one month.  
12 Hundreds of thousands of cases.

13 Q. Bear with me.

14 So I -- I just want to focus with you on part 1(a).

15 A. Mm-hmm.

16 MR. SATIN: Mr. Yalowitz, are you now referring to

17 Ms. Weill's report, or Mr. Reisner's?

18 BY MR. YALOWITZ:

19 Q. So could I direct your attention to --

20 A. It's my report; right? Yeah.

21 Q. -- to your report, page 9.

22 A. Yes, my report.

23 Q. Okay. Do you have page 9 before you?

24 A. Yes.

25 Q. This is -- this is where you're discussing the

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1 until 2004, the judges, prosecutor were under the same  
2 unit, subordinate to the same structure; and then, in  
3 2005, they divided the -- the units, they created the  
4 special unit for the military courts, which is now in  
5 the branch with the other martial court, which is  
6 separated from the prosecution, which is the minimum  
7 standard of -- of requirement that the prosecution and  
8 the judges are not in the same -- in the same place.

9 Q. Is it your opinion that people who were convicted of  
10 crimes in the military courts before the changes took  
11 place in 2004 should be released from prison because of  
12 the appointment procedures?

13 A. People who do not have due process have the right to be  
14 judged by a competent tribunal and to have right to due  
15 process.

16 Then the -- you know, criminal case should be  
17 reviewed and decided upon the facts. If they are  
18 guilty, they are guilty; if they are not guilty, they  
19 are not guilty. But the point is that everyone deserves  
20 a due process, that's right.

21 Q. Sure. So do you think that the appointment process that  
22 existed before 2004 was so central to the core of due  
23 process that the people who were convicted of crimes  
24 under that system should be released from prison?

25 A. I don't remember that I said that someone should be

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1 appointment --

2 A. Yes.

3 Q. -- procedure; right?

4 And do I have it right that your criticism in this  
5 part of your report is not related to the fact of being  
6 a military court, but is derived from the particular  
7 appointment process that you're describing; do I have  
8 that right?

9 A. Okay, appointment process and the structure, the unity  
10 structure, as you can see, were also changed in 2004,  
11 because of this default. During --

12 Q. The 2004 change was a change to the appointment  
13 procedure; right?

14 A. Both. You have one change -- I mean, the first change  
15 was that during -- from '67 to 2004, you have long years  
16 of situation in which the judge were appointment through  
17 the recommendation of the prosecutor. That changes in  
18 2004, and they establish a -- how do you say it -- an  
19 appointment committee that recommends for the military  
20 commander. This was --

21 Q. These --

22 A. Just -- if I may finish?

23 Q. Please, please. I apologize.

24 A. Yeah.

25 This was one change. And the second change was that

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1 released from prison.

2 Q. I'm asking you.

3 A. Okay. I thought that you are referring to my other  
4 answer.

5 Q. No, no; I'm asking you.

6 A. First of all, what -- now I'm -- the question?

7 Q. Do you want me to ask it again?

8 A. Yeah.

9 Q. Sure.

10 Is it your opinion that the appointment procedures  
11 that existed before 2004 are so central to the core of  
12 due process that people who are convicted of crimes in  
13 the military courts, who are still serving time, should  
14 be released from prison because of the appointment  
15 process?

16 A. I think that court -- in order to be a competent court,  
17 should have a correct procedural appointment of judges  
18 to secure their independency, impartiality, and being  
19 nonpolitical. This is the accepted rule.

20 Whether -- now, the military -- you are asking me,  
21 "Do you think that if a judge is not really independent,  
22 it's worth making another trial?"

23 These are the rules of fair trial; you know? We  
24 can't just put people in prison without any rule of fair  
25 trial, if anyway they did this. I don't know; what can

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1 I answer of this? For me -- this is -- was a sarcasm;  
2 yes? It's not my position.

3 The rule of fair trial are established to make sure  
4 that procedure are well conducted, and that people that  
5 are guilty will be in prison; people that are innocent  
6 will be free. This the criminal law.

7 I think that court should be independent, and if  
8 they are not, it is a serious problem in the due  
9 process, and maybe you should have a retrial.

10 Q. So --

11 A. I don't know how to cure the situation; I don't have any  
12 position on what to do with these people. I'm just  
13 observing that the court are not guaranteeing fair trial  
14 as a question of independency.

15 Q. So we -- we're here about 21 convictions; right?

16 MR. SATIN: Objection. Lack of foundation. Calls for  
17 speculation.

18 A. I'm here for an expert opinion I gave on military  
19 courts.

20 BY MR. YALOWITZ:

21 Q. All right. You were provided the files of 21 people who  
22 were convicted of terrorism; right?

23 MR. SATIN: Objection, asked and answered, lack of  
24 foundation.

25 A. I was sent the link to the cases, yeah.

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1 BY MR. YALOWITZ:

2 Q. Okay. And most of those people were convicted before  
3 2004?

4 MR. SATIN: Objection, lack of foundation.

5 A. Yeah, this, I'm sorry, I told you, I don't know.

6 I don't remember the fact. I have not any particular  
7 position on these specific trials.

8 BY MR. YALOWITZ:

9 Q. Are you advocating that any of those 21 individuals were  
10 actually innocent?

11 MR. SATIN: Objection, lack of foundation.

12 A. Is that what you -- I don't know.

13 BY MR. YALOWITZ:

14 Q. No, no, I'm asking --

15 A. I didn't read the cases.

16 BY MR. YALOWITZ:

17 Q. I'm asking -- I'm just asking the question.

18 A. Yeah.

19 Q. You shouldn't assume from my answer that I believe  
20 you --

21 A. No, no, so if I think that --

22 Q. -- feel a certain way -- let me speak. Let me speak.

23 I'm going to ask you questions, and you just answer  
24 from your heart. Don't assume that I believe -- I'm not  
25 arguing; I'm just asking questions. So you may agree,

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1 and then you say "I agree," or you may disagree, you say  
2 you disagree. Or you may have no opinion; whatever your  
3 answer is.

4 A. Mm-hmm.

5 Q. Okay, but don't assume from my question that I'm  
6 agreeing with you or disagreeing with you; I'm just  
7 asking you questions. Does that make sense?

8 A. Yes.

9 Q. Okay.

10 So are you offering any opinion at all about the  
11 guilt or innocence of the 21 cases?

12 A. Absolutely no. I have no position on this.

13 Q. And are you offering an opinion on whether any of those  
14 21 convicted criminals should be released from prison?

15 MR. SATIN: Objection, lack of foundation.

16 A. I don't have any position on this question.

17 BY MR. YALOWITZ:

18 Q. Are you offering any opinion on whether those 21  
19 individuals should be subject to any kind of retrial?

20 MR. SATIN: Objection, lack of foundation.

21 A. You are -- more generally are asking me what is the --  
22 how to cure a situation in which military courts which  
23 are not properly constitute provide sentence and  
24 decision. I'm not -- I don't know. I don't know what  
25 to do with it now. I'm just observing it and telling

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1 you that these process are not according to  
2 international standard of due process. I'm not here --  
3 I'm not the legal adviser on how -- how to cure the  
4 situation. I don't know.

5 BY MR. YALOWITZ:

6 Q. Do you -- do you have any opinion at all about whether  
7 any of the 21 verdicts is reliable?

8 MR. SATIN: Objection, lack of foundation.

9 A. Of course not. I didn't read the cases. I don't know.

10 BY MR. YALOWITZ:

11 Q. So do you know whether, in any of the 21 cases, there  
12 was a judge on the court who had no legal training?

13 A. I don't know this.

14 MR. SATIN: Objection, lack of foundation.

15 A. Yeah. This could be checked, but I have no idea.

16 BY MR. YALOWITZ:

17 Q. Do you know whether, in any of the 21 cases, there was  
18 a rule change in the middle of trial?

19 MR. SATIN: Objection, lack of foundation.

20 A. Of course I can have no idea. I don't know when the  
21 trial were taken, and most importantly, I don't know the  
22 rules. You know? It's so difficult to know when they  
23 were published, and et cetera. This would require real  
24 work.

25 BY MR. YALOWITZ:

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1 Q. So -- so the answer is you --  
 2 A. No.  
 3 Q. You don't know?  
 4 A. I don't know.  
 5 Q. I want to ask you about a statement you make on page 11  
 6 of your report.  
 7 A. Yeah.  
 8 Q. You write on page 11:  
 9 "Human rights law, which was developed after the  
 10 drafting of the Geneva Conventions, prohibits the trial  
 11 of civilians by military courts exactly because they  
 12 generally do not comply with the requirement of  
 13 an independent and impartial judiciary."  
 14 Did I read that correctly?  
 15 A. Yeah, it's what I wrote -- what I wrote.  
 16 Q. And so I'm -- you're making a distinction there between  
 17 human rights law on the one hand and international  
 18 humanitarian law on the other hand.  
 19 A. Mm-hmm. Mm-hmm. Mm-hmm. Yes.  
 20 Q. And what is the point that you're making in this  
 21 sentence? Because I didn't understand it.  
 22 A. The general rule is that military courts would not reach  
 23 the requirement of independency and impartiality  
 24 structurally, according to human rights law; and  
 25 therefore the requirement of human rights law is that

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1 civilians, generally, yes, should not be tried in a  
 2 military court.  
 3 Now, we have the IHL provision that is allowing  
 4 this -- yes, we agree, Article 66 -- so here we can see  
 5 there is a kind of -- not a kind; there is a clash  
 6 between these two branches of law. Right?  
 7 Then what do we do with the clash of two norms? So  
 8 in order to resolve a clash of norm in international  
 9 law, you have two positions, or two -- two ways of doing  
 10 it. One is that the later norm prevail on the former  
 11 norm; the other one is the lex specialis, that we  
 12 discussed, later.  
 13 But anyway, the point was to show that there is  
 14 a problem of independency in military courts.  
 15 Q. That -- so --  
 16 A. Yeah, I mean, I don't know where -- we didn't -- what  
 17 that you don't understand?  
 18 Q. I'm sorry?  
 19 A. What did you -- didn't you understand?  
 20 Q. Which word didn't I understand?  
 21 A. Yeah.  
 22 Q. So --  
 23 A. The point, you didn't understand.  
 24 Q. So I -- I guess I didn't understand the point. Are you  
 25 arguing that Article 66 has become obsolete and should

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1 be disregarded?  
 2 A. No. No. No, no, the -- I didn't -- did not write this.  
 3 I think maybe if you read the last paragraph, you  
 4 can understand my -- my position.  
 5 Q. Is it more of a rhetorical point, that --  
 6 A. No. No. No, no. The issue is that because IHL is --  
 7 let's say that the establishment of military court to  
 8 try civilians, it is an exception of the general rule  
 9 that civilians shall not be tried by military court; we  
 10 agree on this?  
 11 Q. Okay.  
 12 A. Yeah?  
 13 Q. I understand that.  
 14 A. Yeah. So from this, the idea that if we have an  
 15 exception, it should be restricted; it should be framed  
 16 within its own authority and not -- first not enlarged,  
 17 and second, to understand this authority in the context  
 18 which it was provided, which is the law of military  
 19 occupation, equal temporary situation, transit  
 20 situation, and not possible to have these trials that  
 21 are illegal according to human rights law to generate an  
 22 entire population, including children, for 45 years.  
 23 Q. So is that an argument about independence, or does  
 24 that really go more toward limiting the scope to  
 25 security crimes?

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1 A. Both.  
 2 Q. How does it relate to independence?  
 3 A. Here I provide a citation why the human rights law said  
 4 this; you can read them in footnote -- no, sorry, it's  
 5 not here. Let me show you -- in footnote 35, for  
 6 example. And in the text -- you can write it -- and in  
 7 the text that is before footnote 36, that is customary  
 8 law, ICRC customary law study.  
 9 Q. So -- right; I appreciate that.  
 10 A. Yeah, I mean -- yeah.  
 11 Q. And I read it.  
 12 A. Yeah, exactly, so -- yeah.  
 13 Q. But what I'm not understanding is, it sounds like the  
 14 sources you've brought --  
 15 A. Yeah.  
 16 Q. -- in this report are saying, as a matter of human  
 17 rights law in the world, it's a bad idea to have  
 18 military courts because of independence concerns.  
 19 A. Right.  
 20 Q. Is that a fair summary?  
 21 A. Yeah.  
 22 Q. And then there's a special situation, which is described  
 23 by IHL, which is when there is an occupation, if the  
 24 foreign military chooses to establish a court for  
 25 security purposes, then that court must be a military

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1 court.

2 MR. SATIN: Objection, compound.

3 BY MR. YALOWITZ:

4 Q. Do I have that right?

5 A. Article -- IHL allow the creation of military courts;  
6 yes, you had it -- this is true.

7 We have to remember that human rights law has been  
8 developed after the Geneva Convention. So that means  
9 that the Geneva Convention -- the -- should be  
10 interpreted in light of developing human rights law, and  
11 this is how things have been made.

12 So through that the authority in itself, until there  
13 is not another provision that will repeal IHL, exists;  
14 but then we must view the function, jurisdiction, the  
15 long-term function, in light of human rights law, which  
16 is another body of law which applied on the occupation  
17 in the West Bank.

18 Q. So if you were the legal adviser to the nation of  
19 Israel --

20 A. Lots of things will change.

21 Q. How -- if they -- and they took your advice, which  
22 they --

23 A. Can you recommend me?

24 Q. With pleasure. I don't know if you're familiar with  
25 this, but legal advisers are not always obeyed, you

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1 know.

2 But suppose you were the legal adviser --

3 A. Yes.

4 Q. -- for the State of Israel, and they were -- they were  
5 planning to obey you, how would you -- if they said,  
6 "Look, we'll obey you, but we just cannot end the  
7 occupation today. It's too complicated, there's too  
8 many factors; we just can't do it. But we want to have  
9 as good of a system as possible governing the security  
10 laws, because we want to prosecute terrorists, we want  
11 to give them a fair trial, and then, if they're  
12 convicted, we'll punish them; but we really do want to  
13 give them as fair a trial as we can in a court that's  
14 structurally sound as we can. How would you reconcile  
15 -- what recommendations would you make to reconcile  
16 Article 66, on the one hand, with the human rights law  
17 norms that you've described on pages 11 and 12?"

18 A. Before I go back to Article 66, you remember I was  
19 speaking about they may bring them to military court.  
20 Now -- so there is a sense of -- kind of emergency in  
21 this article. You see, you are in the middle -- you are  
22 in the middle of the war; the occupation starts; you  
23 still have major occupation issue to -- the security  
24 issue to regulate. You know, occupation can take one  
25 year, two years, until there is political agreement --

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1 (Reporter clarification.).

2 MR. YALOWITZ: "Until there's a political agreement."

3 A. And the occupation. And -- so during this period, you  
4 are granted this -- this authority which can today, in  
5 an anachronistic view, be seen as a provision that will  
6 not comply to human rights law. And, by the way, maybe  
7 today it wouldn't have been drafted like this; but  
8 I don't know. This is a speculation.

9 Anyway, the point is that during that time, yes, you  
10 may do this, because there is a sense of emergency,  
11 there is chaos, you need to establish your authority.

12 45 years doing it, you could -- you may also not do  
13 this, and provide a better court, in the sense of being  
14 independent, impartial, and applying a law with --  
15 involve better due process than we have today.

16 Because, frankly, what can be a justification not to  
17 have a due process right? What can be a justification  
18 not to have independent judge? No justification. No  
19 situation can bring to have nonindependent court. It's  
20 simply nothing. You don't need trials, then; just --  
21 you know, put people in jail, and this is it.

22 Q. Anything else?

23 A. I mean -- so I don't -- the point how to cure the  
24 situation, I would do other courts.

25 Q. Would you have -- what kind of courts would you have?

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1 A. I mean, why should -- I need now to think alternatives  
2 to the existing military courts? Is this -- yeah?

3 Q. I'm just asking.

4 A. I need to think about that. It's a big question, you  
5 know. I can do a proposal for the Israeli State, if  
6 they need it, you know.

7 Q. All right.

8 A. No, I mean ...

9 Q. Is there any case you're aware of that holds that human  
10 rights law prohibits the trial of civilians by military  
11 courts?

12 A. What if there is human rights law -- what?

13 Q. Sure. Do you know of a case --

14 A. Yeah?

15 Q. -- a decision by a court that says human rights law  
16 prohibits the trial of civilians by any military court?

17 A. There were a decision of the Human Rights Committee on  
18 this -- Human Rights Committee on this issue. The Human  
19 Rights Committee is the -- the treaty body established  
20 by the UN commission -- the UN covenant on civil and  
21 political rights, stated the possibility to send  
22 communication to this committee.

23 Now, they are not a binding court, but they give  
24 decisions, and it's written by law professors, and there  
25 was two or three cases in the context of the Turkey



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1 military courts, if I'm not wrong. I can have the -- I  
2 think maybe here, even, I have the citation, if you need  
3 me to look -- one second.

4 Yes -- oh, here, it was even -- sorry.

5 Yes, exactly. So it's not only the Human Rights  
6 Commission; it's even the European Court of Human  
7 Rights, with this is -- so I noted the Human Rights  
8 Committee, and you have also the European Court of Human  
9 Rights in Sahin versus Turkey.

10 Q. What page are you on?

11 A. Page 400 on my 2007 article, footnote 17. It's a case  
12 from 2001. Footnote 17.

13 Q. Okay, thank you.

14 Are you aware of the other cases -- this paragraph  
15 says "See for example"?

16 A. Yeah. So there is a Human Rights Committee decision.

17 I don't remember by heart the references, but there are.

18 Q. And that's the committee that's referenced in -- you  
19 quote that committee in your report?

20 A. It's possible. Let me -- I don't remember.

21 Q. So just directing your attention to --

22 A. Yeah, here, yeah, footnote -- no, this is a general  
23 comment.

24 Q. Bear with me. I just had it -- directing your attention  
25 to page 12.

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1 A. Yeah, exactly, yeah.

2 Q. You -- you referenced the general comments of the UN  
3 Human Rights Committee. And are you saying you believe  
4 there are some advisory opinions by the UN Human Rights  
5 Committee that -- that would comment on this topic?

6 A. It's not advisory opinion; it's what we call decision on  
7 communication. It's like the victims and -- the case to  
8 the Human Rights Committee, and they give decision --  
9 yes. I -- if my memory is -- I'm, like, almost certain  
10 that they have -- there are a few cases of the Human  
11 Rights Committee.

12 Q. And is it -- is it a binding decision, or is it  
13 a precatory decision?

14 A. It's a binding decision for the states before them.

15 Q. And is the United States a party to this -- is it due to  
16 a convention, or what is it?

17 A. Yeah, it's the convention -- the UN Convention of  
18 Political and Civil Rights, which -- in which they are  
19 a party. But then you need to accept the communication  
20 process. But anyway, the Human Rights Committee is an  
21 organ created from this convention, which they're  
22 a party of.

23 And now what is interesting in this decision, like  
24 the general comments -- which are, by the way, cited  
25 even by the High Court of Justice; the UN Human Rights

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1 Committee was cited in several cases by the -- because  
2 they form what we call the customary law, so it's law,  
3 right? We have more and more decision, opinions, and --  
4 yeah.

5 So they are binding for the litigating party, but  
6 today, international law is also -- is influenced by  
7 different things. As you can see, the High Court of  
8 Justice, which refer more than one time to their  
9 decisions.

10 Q. Is the -- you read the United States Supreme Court in  
11 Hamdan; right?

12 A. Yeah.

13 Q. You talked about it in your report?

14 A. Yeah, I studied this, yeah.

15 Q. It was -- it was an important case --

16 A. Important.

17 Q. -- in the United States.

18 A. Very good case, yeah.

19 Q. Yeah. And was -- did you read the briefs in that case  
20 as well?

21 A. Not a lot -- not -- not all of them, because there are  
22 a lot; that's what I meant. Not all of them, because  
23 there are a lot. Some of them I read; not everything.

24 Q. Did anybody make the argument in that case that  
25 international human rights law prohibits the trial of

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1 civilians by any military court?

2 A. I don't remember. I don't -- I -- you know, I don't  
3 remember the briefs. I mean, I read the decisions.

4 Q. I didn't see it in -- I didn't see that argument raised  
5 in the decisions. Did you?

6 A. In the decision?

7 Q. Yeah.

8 A. No, in the decision, they referred to the general  
9 practice of -- maybe what we can refer to the -- the  
10 customary law, they refer to Protocol 1, for example,  
11 that the US is even not a party to; but they recognized  
12 that Article 75 constituted customary law. And indeed,  
13 most of the due process rule are reflected there.

14 But I think they -- they left this more open,  
15 because they referred to the general rule of civilized  
16 state, or whatever -- yeah, I don't remember the exact  
17 thing.

18 Q. I mean, the -- the issue in Hamdan --

19 A. Yeah.

20 Q. -- was that there was a special constituted military  
21 court that had rules that the Supreme Court found  
22 offensive; is that fair to say? Or at least the  
23 majority of the Supreme Court found offensive.

24 A. Can you repeat that? I'm not sure --

25 Q. Sure.

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1 A. -- I'm following until the end. If you want, I can tell  
 2 you what I -- but repeat this again?  
 3 Q. Sure.  
 4 So the facts in Hamdan were -- Hamdan is a case  
 5 about Guantanamo Bay --  
 6 A. Yeah.  
 7 Q. -- detainees; right? And Hamdan was to be tried by  
 8 a specially constituted military court. Right?  
 9 A. Right.  
 10 Q. And he objected to that on the basis of a number of  
 11 things, including international humanitarian law; right?  
 12 A. Right.  
 13 Q. And in fact the -- a majority of the Supreme Court  
 14 agreed with Hamdan that the specially constituted  
 15 military commission violated international humanitarian  
 16 law, for a number of reasons; right?  
 17 A. Yes. They violated Article 3; they were not properly  
 18 constituted. Yeah.  
 19 Q. For example, they criticized the idea that it would be  
 20 okay to try a person for a crime and not allow him to be  
 21 present --  
 22 A. Yeah, in that sense.  
 23 Q. -- to see the evidence; right?  
 24 A. Right.  
 25 Q. Okay. Did -- did any of -- did the opinion in the case

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1 in any way treat the topic of whether the whole idea of  
 2 trying Hamdan in a military court was somehow improper,  
 3 and that he should only be tried in a civilian court?  
 4 A. No. If I remember well, no.  
 5 Q. And I can't remember --  
 6 A. Sorry, can I complete my answer?  
 7 Q. Yeah, yeah, please.  
 8 A. The answer is "no," and exactly the issue was whether  
 9 this court are properly constituted.  
 10 Q. Correct.  
 11 A. Yeah, and --  
 12 Q. I agree with that.  
 13 A. And then they review it not only according to IHL, but  
 14 I think -- you know, domestic US law was very important  
 15 there.  
 16 Q. Agreed.  
 17 So they relied on a case from the 1940s called  
 18 Quirin; do you recall that case?  
 19 A. Mm-hmm. Yeah.  
 20 Q. Are you familiar with that case?  
 21 A. Yeah.  
 22 Q. That's a case in which German military officers snuck  
 23 into the United States, right, or German military  
 24 personnel --  
 25 A. Mm-hmm.

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1 Q. -- snuck into the United States. Do you recall that  
 2 case?  
 3 A. Mm-hmm. Yes.  
 4 Q. And they were -- they were apprehended, and they were  
 5 remitted to a military tribunal for trial; right?  
 6 A. Yeah. What year was it? I can't recall exactly.  
 7 Q. Does 1942 sound right to you?  
 8 A. '42? Yeah, maybe, yeah.  
 9 Q. And by 1942, the United States had entered the war.  
 10 A. Mm-hmm. Yeah.  
 11 Q. And -- and the argument in Quirin by the defendants was  
 12 that they should be tried in a civilian court rather  
 13 than military court; does that sound right to you?  
 14 A. Mm-hmm. Yeah.  
 15 Q. And the Supreme Court rejected that argument; right?  
 16 A. Yeah.  
 17 Q. And then in Hamdan, the Supreme Court relied on Quirin;  
 18 is that right?  
 19 A. I don't remember in what context. Can you recall me the  
 20 content --  
 21 Q. Yeah, I don't remember either.  
 22 A. Maybe we need to read the paragraph related, yeah.  
 23 Q. Yeah. We'll -- we'll look for it --  
 24 A. Yeah.  
 25 Q. -- at the lunch break.

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1 A. Yeah. Okay.  
 2 Q. And we can resume --  
 3 A. Yeah.  
 4 MR. SATIN: Is perhaps now a good time --  
 5 A. Yeah, perhaps. I need to go to the toilet also.  
 6 MR. YALOWITZ: I think so. Yeah, let's -- let's take  
 7 a lunch break.  
 8 (12:45 p.m.)  
 9 (Lunch break taken.)  
 10 (Exhibit 4 marked for identification.)  
 11 BY MR. YALOWITZ:  
 12 Q. So before we went to take lunch, we were talking about  
 13 the citation in Quirin -- I'm sorry, in Hamdan, of  
 14 Quirin. So I just wanted to direct your attention to  
 15 exhibit 4, which we've placed before you, which is the  
 16 Hamdan case; right?  
 17 A. Yes.  
 18 Q. And if you go to page 28.  
 19 Just to orient you, do you see we're in part 5 of  
 20 the principal opinion?  
 21 A. Yes.  
 22 Q. And then if you turn the next page, they are discussing  
 23 Quirin; right?  
 24 A. Yes.  
 25 Q. And does that refresh your recollection that the Supreme



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1 Court in Hamdan found Quirin to continue to be good law,  
2 and relied on it to the degree stated in the opinion?  
3 MR. SATIN: Well, objection, improper refreshing of  
4 recollection.

5 But you can answer.

6 A. I -- I would need to -- more time to read what exactly  
7 they rely on Quirin, in what context. Like this,  
8 I can't really recall what was that, so maybe if you ask  
9 me a more specific question?

10 BY MR. YALOWITZ:

11 Q. Sure. I -- I don't think it's actually very important.

12 A. Okay.

13 Q. I just felt, as a courtesy, since you had asked about  
14 where in the opinion it might be, I would show it to  
15 you. But if it doesn't refresh your memory, that's  
16 okay.

17 A. No, but what was the question?

18 Q. Were they -- in Hamdan, were they citing Quirin with  
19 approval?

20 A. If -- if I recall well, I mean, wasn't Quirin brought in  
21 the context of the -- whether conspiracy constitutes  
22 a crime, a war crime?

23 I mean, I'm not sure it was brought as to the  
24 question whether commission are -- are well set.

25 Q. It's all right. If you don't remember off the top of

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1 A. Mm-hmm.

2 Q. Right? You have to say --

3 A. Yeah, but in the -- okay, but in the context of Hamdan,  
4 I -- we need more time to -- to read this.

5 Q. Okay. That's okay; I think it's enough.

6 A. Enough -- okay.

7 Q. Okay. Can we turn to the interim agreement between the  
8 PA and the PLO?

9 A. Yeah, sure.

10 Q. You're familiar with it; right?

11 A. Yeah.

12 Q. Have you read the provisions dealing with criminal  
13 jurisdiction?

14 A. I read it. I read them -- not yesterday; it was quite  
15 long time ago. But yes, of course, I read them.

16 I can't recall every word, but yes, of course I read  
17 them.

18 Q. Do you recall generally that the interim agreement  
19 required the redeployment of Israeli military forces out  
20 of what they called Area A?

21 A. Yes.

22 Q. And it required the creation of a PA judicial system;  
23 right?

24 A. Yeah.

25 Q. Palestinian Authority judicial system? Is that right?

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1 your head, it's not important.

2 A. Okay. So let's continue.

3 Q. Okay. I just felt duty bound to show it to you.

4 A. Mm-hmm.

5 Q. All right. We discussed briefly earlier today the  
6 interim agreement; do you recall that?

7 A. I'm sorry, so we finished about Hamdan?

8 Q. Yes.

9 A. Yeah, so it wasn't any -- no, because I recall you asked  
10 me a question before we went to -- to the break.

11 Q. I think I asked you, did they rely on Quirin?

12 A. Ah, but for whether it was properly constitute the --  
13 the court, Quirin was brought in another context, I  
14 think.

15 Q. Quirin --

16 A. Yeah.

17 Q. Do you recall that Quirin was a case about enemy  
18 combatants who went to the United States, and they were  
19 apprehended while they were in the United States --

20 A. Yeah.

21 Q. -- not in uniform?

22 A. Yeah.

23 Q. And the question in Quirin was, was it appropriate in  
24 that circumstance to turn them over for trial to a  
25 military tribunal?

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1 A. Yes.

2 Q. And it also provided that the Israeli military  
3 government would continue in areas B and C; right?

4 A. Yes.

5 Q. And that Israel would retain the necessary legislative  
6 judicial and executive powers required to fulfill its  
7 obligations and rights under the interim agreement; is  
8 that right?

9 A. Yes.

10 Q. And do you recall that Israel, through its military  
11 government, had the powers and responsibilities that  
12 were not transferred to the PA?

13 A. Yes.

14 Q. Now, the judicial powers that the military government  
15 retained surely included the criminal jurisdiction set  
16 out in the annex to the interim agreement; right?

17 A. Mm-hmm.

18 Q. Do you recall --

19 A. It was annex 4, I think; right?

20 Q. I was going to ask you if you recall annex 4.

21 A. Yeah.

22 Q. All right. And you would agree with me that by 1995,  
23 the PLO and its negotiators were well aware of the  
24 existence and contours of the Israeli military court  
25 system as it existed at that time in the West Bank;

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1 right?  
 2 A. If the PLO were aware of the military court?  
 3 Q. Yes.  
 4 A. I can imagine, yeah.  
 5 Q. How could they not have been; right?  
 6 A. Yes, I mean -- I think --  
 7 MR. SATIN: Objection, calls for speculation.  
 8 BY MR. YALOWITZ:  
 9 Q. You can answer.  
 10 A. If they were aware of the -- for sure they were aware of  
 11 existence. To tell you they know every legal structure  
 12 of the military court, this, I cannot answer. For sure  
 13 they know they exist.  
 14 Q. So you recall that under annex 4, and under the interim  
 15 agreement, Israel had the overriding responsibility for  
 16 security for the purpose of protecting Israelis and  
 17 confronting the threat of terrorism?  
 18 A. Yes.  
 19 Q. And that Israel had sole criminal jurisdiction over  
 20 offenses relating to Israel's security interests?  
 21 A. Yes.  
 22 Q. The interim agreement provided that Israel was to  
 23 continue to carry the responsibility for overall  
 24 security of Israelis; is that right?  
 25 A. Yes, from the jurisdiction of Israelis, yeah.

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1 Q. But not just jurisdiction over Israeli individuals, but  
 2 responsibility for the overall security of Israelis;  
 3 right?  
 4 A. Probably -- I don't remember the wording, but I imagine,  
 5 if you were reading the provision of the interim  
 6 agreement, so yes.  
 7 MR. SATIN: Don't guess.  
 8 WITNESS: Okay.  
 9 A. No, but I mean --  
 10 BY MR. YALOWITZ:  
 11 Q. It's not controversial; right?  
 12 A. Yes.  
 13 Q. You recall that the interim agreement provided that both  
 14 sides were to act to ensure the immediate, efficient and  
 15 effective handling of any incident involving a threat or  
 16 act of terrorism?  
 17 A. Legal assistance, you mean?  
 18 Q. Yeah.  
 19 A. Yeah, there was something about regulation about --  
 20 again, I can't recall by heart, but there was some  
 21 provision on that.  
 22 Q. Do you -- do you want to see it? Should I show it to  
 23 you?  
 24 A. I don't -- I don't know. Do I need any specific  
 25 question relating to this?

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1 Q. Well, the -- my specific question is this: So we're  
 2 talking about an agreement between Israel and the PLO.  
 3 A. Mm-hmm.  
 4 Q. Right?  
 5 You have to say --  
 6 A. Yes. Yes.  
 7 Q. And they -- the PLO understood that the military courts  
 8 existed; right?  
 9 MR. SATIN: Objection, calls for speculation.  
 10 A. I don't know what it has to do with the interim  
 11 agreement, anyway.  
 12 BY MR. YALOWITZ:  
 13 Q. Just bear with me.  
 14 A. I don't know what they understood. I wasn't entering  
 15 the negotiation.  
 16 Q. It wasn't -- the military courts were not secret; right?  
 17 A. No, they existed at that time; on this, we can agree.  
 18 Q. I mean, it was -- it was open, and notorious, and  
 19 anybody --  
 20 A. They were known.  
 21 MR. SATIN: Objection --  
 22 BY MR. YALOWITZ:  
 23 Q. They were well known; right?  
 24 MR. SATIN: Objection, compound question.  
 25 MR. YALOWITZ: Too many people speaking at once.

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1 Q. They were well known; right?  
 2 MR. SATIN: Objection, calls for speculation.  
 3 A. They were known, I think so, yeah.  
 4 BY MR. YALOWITZ:  
 5 Q. And -- and in the interim agreement, Israel and the PLO  
 6 agreed that Israel, through its military government,  
 7 would retain its judicial functions for security  
 8 purposes; right?  
 9 A. Yeah. They also agreed that the settlements will  
 10 continue. Yeah.  
 11 Q. And -- and so when -- when a legal document uses words  
 12 like "continue" and "retain," does that suggest some  
 13 form of ratification to you of the existing system, at  
 14 least insofar as the PLO and the PA were concerned?  
 15 A. Ratification in the sense that they think they are  
 16 legitimate bodies?  
 17 Q. Yes.  
 18 A. I don't think so. I think this is a question of  
 19 negotiation, you know, and -- for example, Israel  
 20 continued to -- to hold control over settlements, and  
 21 I don't think that the PLO will think that settlement  
 22 are legitimate under international law. But -- you  
 23 know, those were the negotiation. When you are --  
 24 negotiate with an occupying force, you sometimes -- you  
 25 need to -- you have to accept some conditions.

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1 Q. You think that the continuation of the military courts  
 2 was a condition accepted by the PLO in the interim  
 3 agreement?  
 4 MR. SATIN: Objection, calls for speculation.  
 5 A. I don't know. I don't know anything about these  
 6 negotiations. I don't know.  
 7 BY MR. YALOWITZ:  
 8 Q. Well, I'm not speaking of the --  
 9 A. Yeah.  
 10 Q. -- negotiations themselves; I mean, in an agreement, we  
 11 have to go by the text of the agreement?  
 12 A. I agree.  
 13 Q. So when the agreement uses words like "continue" and  
 14 "retain" to describe the relationship between the  
 15 military courts and security crimes, isn't that a tipoff  
 16 to you that the PLO was agreeing that those entities  
 17 should continue until further agreement is reached?  
 18 MR. SATIN: Objection, lack of foundation.  
 19 You can answer, if you can.  
 20 A. Maybe they will -- they agreed that their existence will  
 21 continue, but again, it's not accepting that they are  
 22 legitimate and legal bodies.  
 23 BY MR. YALOWITZ:  
 24 Q. Well, remember we talked earlier about how parties can  
 25 reach agreement on the expression of various

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1 international norms?  
 2 A. Yeah.  
 3 Q. And so isn't this an example of that?  
 4 A. Of what? That --  
 5 Q. Sure. So --  
 6 A. Yeah. Read me -- maybe here it's worth reading the  
 7 exact phrase that referred to the military court.  
 8 Q. Sure. So why don't we give you --  
 9 A. I'm sorry about all these photocopies.  
 10 Q. Yeah. No, that's okay. I'll give you the interim  
 11 agreement.  
 12 A. Just the provision we are talking about, the military  
 13 court, specifically.  
 14 MR. YALOWITZ: So we can mark these as 5 and 6. The interim  
 15 agreement is 5, and annex 4 is 6.  
 16 (Exhibits 5 and 6 marked for identification.)  
 17 BY MR. YALOWITZ:  
 18 Q. So -- so you want me to take you through the things --  
 19 A. No, just the relevant for the -- you say that they  
 20 agreed that the military courts are what is --  
 21 Q. So -- so just directing your attention in the main  
 22 agreement to 17.4(b).  
 23 A. Page 17?  
 24 Q. No, no.  
 25 A. No?

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1 Q. I'm sorry: Article 17.  
 2 A. Oh, okay. I'm a bit lost.  
 3 Do you have the number of the page? No?  
 4 Q. Page 18.  
 5 A. 18 -- here? I'm sorry; is this the right one? This is  
 6 the protocol -- do you want the protocol?  
 7 Q. Yeah, yeah, perfect -- no, no, that's good.  
 8 A. No? This one?  
 9 Q. So to start, while we look at that -- so do you see  
 10 chapter 3, "Legal Affairs," toward the bottom?  
 11 No, no, it's -- it's on page 18.  
 12 A. Ah, chapter 3; I was looking for the Roman number.  
 13 Sorry.  
 14 Q. And then Roman 17, which is really impossible to see;  
 15 it's jurisdiction. Right?  
 16 A. Yes.  
 17 Q. And then if we turn to paragraph 4, you see 4.a.:  
 18 "Israel, through its military government, has the  
 19 authority over areas that are not under the territorial  
 20 jurisdiction of the Council, powers and responsibilities  
 21 not transferred to the Council and Israelis."  
 22 Are you with me?  
 23 A. Yes, of course, yes.  
 24 Q. And then 4b:  
 25 "To this end, the Israeli military government shall

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1 retain the necessary legislative, judicial and executive  
 2 powers and responsibilities, in accordance with  
 3 international law."  
 4 Right?  
 5 A. Yeah, this is the -- this is the authority as an  
 6 occupying power.  
 7 Q. Right.  
 8 A. Yes.  
 9 Q. So -- so the -- doesn't this suggest to you that both  
 10 sides understood that the military courts would  
 11 continue?  
 12 MR. SATIN: Objection. It's a compound question and calls  
 13 for speculation.  
 14 A. Yeah, it's -- exactly. And it says -- I hope -- I think  
 15 that's what is written here. If I read it as a legal  
 16 observer, it's that the -- that the Israeli government  
 17 keeps its authority as an occupying power within the  
 18 territory which were not transferred to the council.  
 19 Q. And on -- and over powers and responsibilities not  
 20 transferred to the council; right?  
 21 A. Yeah. Right.  
 22 Q. Which included security matters; right?  
 23 A. In Area B? Yeah.  
 24 Q. Well, not just Area B, but overall -- overall  
 25 responsibility for security --

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1 A. Yes.  
 2 Q. -- and prevention of terrorism --  
 3 A. Yes.  
 4 Q. -- was not transferred; right?  
 5 A. Yes.  
 6 Q. And so in order to effect its continuing rights and  
 7 obligations with regard to security crimes, the State of  
 8 Israel, through its military government, retained the  
 9 necessary legislative, judicial and executive powers?  
 10 A. Yes, it's meaning to say that they continued to be  
 11 occupying forces, except from the places that  
 12 transferred -- yeah.  
 13 Q. Okay. And, this paragraph 4 --  
 14 A. Yes.  
 15 Q. -- indicates, particularly in the context of the  
 16 continuing jurisdiction -- well, let me -- let's look at  
 17 this, too, now. Okay, let's look at annex 4 --  
 18 A. Yeah.  
 19 Q. -- just so we have it in mind --  
 20 A. Okay.  
 21 Q. Which is the next document. And annex 4, we need to  
 22 look at. It's a little bit roundabout; you know how  
 23 these documents sometimes are.  
 24 So we have -- we have article 1, "Criminal  
 25 Jurisdiction"; are you there?

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1 A. Yes.  
 2 Q. And then the -- section 2:  
 3 "Israel has sole criminal jurisdiction over the  
 4 following offenses..."  
 5 A. Yeah.  
 6 Q. "Offenses committed outside the Territory"; right?  
 7 A. The territory is referred to --  
 8 Q. Is under 1.a. It's just right up above --  
 9 A. Okay. Ah, yes, yes.  
 10 Q. And then, if you look at 1.c.  
 11 Do you have 1.c. before you?  
 12 A. Article 1?  
 13 Q. Article 1, section -- paragraph 1.c. Right on the very  
 14 first page.  
 15 A. I have 1.a. Let's see; where --  
 16 Q. It's -- it's on the first page.  
 17 A. On the first -- ah, yes. So 1.a.c., you mean?  
 18 Q. Yeah. 1.c.:  
 19 "Notwithstanding the provisions of subparagraph a.  
 20 ... the criminal jurisdiction of each side over offenses  
 21 committed in Area B shall be in accordance with the  
 22 provisions of paragraph 2.a of Article XIII of [the]  
 23 Agreement."  
 24 Right?  
 25 Are you with me?

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1 A. Yes, yes. You read the article.  
 2 Q. And then if we flip back to the main agreement, and we  
 3 look at Article XIII, that might just square the circle  
 4 here.  
 5 Article XIII, 2.a, Article XIII, page 16, second  
 6 sentence:  
 7 "Israel shall have the overriding responsibility for  
 8 security for the purpose[s] of protecting Israelis and  
 9 confronting the threat of terrorism."  
 10 Right?  
 11 A. Mm-hmm. Yeah.  
 12 Q. So -- and then --  
 13 A. This is in Area B, yeah.  
 14 Q. And then, if you look at Article XII, just a little  
 15 higher up --  
 16 A. Yeah.  
 17 Q. -- second sentence of paragraph 1:  
 18 "Israel shall continue to carry the responsibility  
 19 for defense against external threats" -- and then  
 20 there's some language which I'm skipping, and then it  
 21 says:  
 22 "... as well as the responsibility for overall  
 23 security of Israelis and Settlements..."  
 24 A. Mm-hmm.  
 25 Q. Right?

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1 A. Mm-hmm.  
 2 Q. "...and will have all the powers to take the steps  
 3 necessary to meet this responsibility?"  
 4 A. Mm-hmm.  
 5 Q. Right?  
 6 A. Mm-hmm -- yes.  
 7 Q. Okay. So this is just -- what we're doing now is we're  
 8 just looking at the language that you and I discussed  
 9 earlier; right?  
 10 A. Right.  
 11 Q. And so we see, by looking at the main agreement and  
 12 looking at annex 4, that the PA agreed that Israel would  
 13 continue to carry overall responsibility for confronting  
 14 security threats; right?  
 15 MR. SATIN: Objection, misstates the record.  
 16 You can answer.  
 17 A. That they retained security for it, yeah.  
 18 BY MR. YALOWITZ:  
 19 Q. And -- and that they retained -- did I -- did we look at  
 20 the -- did we look at the part about -- did we look  
 21 at 17? We did; right?  
 22 Then they -- they were to retain -- in order to do  
 23 that, they were to retain the necessary -- Israel was to  
 24 retain the necessary legislative, judicial and executive  
 25 powers and responsibilities; right?

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1 A. Yes.  
 2 Q. And they were going to do that through the military  
 3 government; right?  
 4 A. Yes.  
 5 Q. Okay. And that included the judicial arm of the  
 6 military government?  
 7 A. Yes. Mm-hmm.  
 8 Q. And this was something to which the PLO agreed?  
 9 A. Yes.  
 10 Q. Okay. Thank you.  
 11 So I want to ask you also about --  
 12 A. But if you -- your question at first was articulated  
 13 that they accepted them as a legitimate body, and I'm  
 14 not sure it is related, this question, because they also  
 15 accepted that there are settlements. And, you know,  
 16 settlements are in violation of the law, the -- the way  
 17 that the military courts function are in violation.  
 18 But ...  
 19 Q. Have you ever heard people from the PA say that the  
 20 reason that they conducted the second Intifada was to  
 21 rid the Palestinian people of the military courts?  
 22 MR. SATIN: Objection, no foundation.  
 23 A. If I heard Palestinian Authority --  
 24 BY MR. YALOWITZ:  
 25 Q. Yeah.

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1 A. -- you're saying? I don't know people -- no, I don't.  
 2 I don't.  
 3 Q. I never heard that either.  
 4 All right. Did -- are you aware that there are  
 5 defendants in the military courts who refuse to  
 6 cooperate with the proceedings of the court?  
 7 A. I personally haven't read any case like this.  
 8 Q. Have you ever heard of defendants in the military courts  
 9 who have said, "I refuse to recognize the legitimacy of  
 10 the court"?  
 11 A. I haven't read cases on this.  
 12 Q. I think I've asked you this before, and if I did,  
 13 I apologize; but let me just make sure I have it.  
 14 You're not expressing any opinion whatsoever about  
 15 the guilt or innocence of any of the 21 defendants;  
 16 right?  
 17 A. No.  
 18 Q. "No" meaning I'm correct?  
 19 A. I'm not taking any position on this. I think the only  
 20 question that I was reviewing in my opinion were whether  
 21 this case has -- even not that the personal, as such,  
 22 but this case, as other cases, has received due process  
 23 and a decision by an independent and impartial court,  
 24 and my answer is no. So these 21 cases is other cases.  
 25 Q. I'm sorry, the 21 cases are what?

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1 A. Were put on a trial within a court that did not comply  
 2 with the requirement of due process and impartiality and  
 3 independency.  
 4 Q. Do you -- are you expressing an opinion on whether any  
 5 of the individual judges in the 21 cases exhibited bias  
 6 or partiality?  
 7 A. I don't know who were the judges, so I --  
 8 Q. So the answer is no?  
 9 A. Is no.  
 10 Q. Are you expressing any opinions about whether any of the  
 11 21 defendants was deprived of notice of the reasons for  
 12 their arrest?  
 13 A. I didn't read the -- I don't know whether they were  
 14 notified.  
 15 Q. So the answer is "no," you were --  
 16 A. No. I don't know whether they were notified.  
 17 Q. Are you expressing any opinion as to whether any of the  
 18 21 defendants was deprived of their right to be informed  
 19 of the nature of the charges?  
 20 A. Again, I didn't follow the facts and the due process  
 21 personally, so -- on each personal -- personal case, so  
 22 I can't tell you.  
 23 Q. You have no opinion on that?  
 24 A. No, I didn't read enough of the material to -- to know.  
 25 Q. Do you -- are you expressing any opinion on whether any

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1 of the 21 was deprived of his or her right to be brought  
 2 before a judge without undue delay?  
 3 A. I mean, I'm repeating myself: No, I didn't read the --  
 4 I don't know after how many time they saw a judge, but  
 5 this could be looked at. I don't know.  
 6 Q. Are you -- "I don't know" meaning you have no opinion on  
 7 that?  
 8 A. Because don't know the facts, yeah.  
 9 Q. Are you expressing any opinion on whether any of the  
 10 21 were deprived of their right to have access to an  
 11 attorney?  
 12 A. On the specific case, again, I don't have the fact; I  
 13 don't know where they meet for the first time the  
 14 lawyer, whether it was after two days, eight days, or  
 15 30 days. I don't know.  
 16 Q. So that would be a "no"?  
 17 A. Yes. Yes.  
 18 Q. Yes? "Yes," you're expressing no opinion; right?  
 19 A. Right. I don't know the facts.  
 20 Q. Are you expressing any opinion on whether any of the  
 21 21 were deprived of the presumption of innocence?  
 22 A. If -- you know, if you linked it with the equality of  
 23 the arms, without knowing their specific facts and  
 24 cases, what they did and how their trial was handle,  
 25 I would tell you that without knowing specifically



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1 and -- generally, from the structure of the court --  
 2 I can tell you that there is no equality of arms, in  
 3 general, in military court cases, especially because how  
 4 the prosecution and the judges are very close to each  
 5 other.

6 So in that sense, trials in general do not have  
 7 equality of arms in military courts.

8 Q. Is -- is equality of arms the same thing as the  
 9 presumption of innocence?

10 A. It's not the same thing as -- it's not directly the same  
 11 thing, of course, but a way to -- to safeguard the  
 12 presumption of innocence and to make it meaningful, not  
 13 just to say "Yes, they are innocent until I prove the  
 14 contrary."

15 To make it meaningful, you need to provide, for  
 16 example, equality of arms; you need to provide due  
 17 process, et cetera, et cetera.

18 (Reporter clarification.)

19 WITNESS: "Due process."

20 A. Otherwise, it is meaningful, the presumption of  
 21 innocence -- it is nonmeaningful; is meaningless.

22 Sorry. Meaningless.

23 BY MR. YALOWITZ:

24 Q. That's okay.

25 A. I'm sorry. My English sometimes ...

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1 MR. HILL: We've got like 3 hours and 37 minutes on the  
 2 record, so -- what will you pay?

3 MR. YALOWITZ: Let's round up to 4.

4 MR. HILL: 4? She'll read and sign.

5 Off the record.

6 (2:38 p.m.)

7 (Whereupon the deposition concluded.)

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1 Q. Are you expressing any opinion on whether any of the  
 2 21 defenda was deprived a trial without undue delay?

3 A. Again, this will require a look on the date when they  
 4 started since their investigation. I have no idea.

5 Q. Are you expressing any opinion on whether any of the  
 6 21 defendants was compelled to testify against himself,  
 7 or to confess guilt?

8 A. I don't know if anyone was compelled; I -- I didn't read  
 9 their investigation.

10 Q. Are you expressing any opinion on whether any of the 21  
 11 was subjected to cruel, inhuman or degrading treatment  
 12 or torture?

13 A. I have no position on this.

14 MR. SATIN: Are you done?

15 MR. YALOWITZ: Okay. I have no further questions.

16 MR. SATIN: We could have a few minutes? We may have a few.

17 MR. YALOWITZ: Okay.

18 MR. SATIN: Give us five minutes.

19 MR. YALOWITZ: Take as long as you need.

20 (A break was taken.)

21 MR. SATIN: We have no questions for Dr. Weill.

22 MR. YALOWITZ: Okay.

23 Thank you so much, Dr. Weill, for coming in.

24 WITNESS: Thank you.

25 MR. YALOWITZ: We much appreciate it.

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# 1 CERTIFICATE OF DEPONENT

2  
 3 I, DR. SHARON WEILL, hereby certify that I have read the  
 4 foregoing pages of my deposition of testimony taken in these  
 5 proceedings on Friday, November 22, 2013, and, with the  
 6 exception of the changes listed on the next page and/or  
 7 corrections, if any, find them to be a true and accurate  
 8 transcription thereof.  
 9

10  
 11  
 12  
 13 Signed: \_\_\_\_\_

14 Name: DR. SHARON WEILL

15 Date: \_\_\_\_\_

16  
 17  
 18 Signed and subscribed to before me  
 19 this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

20  
 21 NOTARY PUBLIC  
 22  
 23  
 24  
 25

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## 1 CERTIFICATE OF COURT REPORTER

2  
3 I, FIONA FARSON, with TransPerfect Legal Solutions, hereby  
4 certify that the testimony of the witness Sharon Weill in  
5 the foregoing transcript, taken on Friday, November 22, 2013  
6 was recorded by me in machine shorthand and was thereafter  
7 transcribed by me; and that the foregoing transcript is a  
8 true and accurate verbatim record of the said testimony.

9  
10 I further certify that I am not a relative, employee,  
11 counsel or financially involved with any of the parties to  
12 the within cause, nor am I an employee or relative of any  
13 counsel for the parties, nor am I in any way interested in  
14 the outcome of the within cause.

15  
16  
17 Signed: \_\_\_\_\_

18 FIONA FARSON

19 Dated: Friday, November 22, 2013  
20  
21  
22  
23  
24  
25

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21 \_\_\_\_\_  
22 \_\_\_\_\_

23 Signed: \_\_\_\_\_

24 Name: DR. SHARON WEILL  
25

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